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<p style="text-align: right;">Page 1</p> <p>UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK ----- x :2:19-CV-07271 MARIA SUAREZ, : Plaintiff, : -against- : SOUTHERN GLAZER'S WINE AND SPIRITS OF NEW YORK, LLC, : Defendant. : ----- x 200 Broadhollow Road Melville, New York 11747 November 1, 2022 10:10 a.m. EXAMINATION BEFORE TRIAL of SOUTHERN GLAZER'S WINE AND SPIRITS OF NEW YORK, LLC, the Defendant herein, by BARRY FINKELSTEIN, taken by the Plaintiff and the Defendant, pursuant to Order, before a Stenotype Reporter and Notary Public within and for the State of New York.</p>	<p style="text-align: right;">Page 3</p> <p>1 B. FINKELSTEIN 2 3 FEDERAL STIPULATIONS 4 5 IT IS HEREBY STIPULATED AND AGREED 6 by and between the attorneys for the 7 respective parties herein, that filing 8 and sealing be and the same are hereby 9 waived. 10 11 IT IS FURTHER STIPULATED AND AGREED 12 that all objections, except as to the form 13 of the question, shall be reserved to the 14 time of the trial. 15 16 IT IS FURTHER STIPULATED AND AGREED 17 that the within deposition may be sworn to 18 and signed before any officer authorized to 19 administer an oath, with the same force and 20 effect as if signed and sworn to before the 21 Court. 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 B. FINKELSTEIN 2 3 APPEARANCES: 4 MOSER LAW FIRM, P.C. Attorneys for Plaintiff 5 5 East Main Street Huntington, New York 11743 6 7 BY: STEVEN J. MOSER, ESQ. 8 9 CONSTANGY, BROOKS, SMITH, AND PROPHETE, LLP Attorneys for Defendant 10 101 Sixth Avenue New York, New York 10013 11 BY: ANGANETTE CABRERA, ESQ. 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 2 B. FINKELSTEIN 3 BARRY FINKELSTEIN, after 4 first having been duly sworn by David P. Yuni, a 5 Stenotype Reporter and Notary Public in and for 6 the State of New York, was examined and testified 7 as follows: 8 EXAMINATION BY 9 MR. MOSER: 10 Q State your name for the record. 11 A Barry Finkelstein. 12 Q What is your current address? 13 A 345 Underhill Boulevard, Syosset, New 14 York 11791. 15 Q Good morning Mr. Finkelstein. I am 16 Steven Moser, an attorney, and I represent Maria 17 Suarez in a lawsuit against Southern Glazer's Wine 18 and Spirits of New York. I will have some 19 questions for you today. Have you ever testified 20 at a deposition before? 21 A I have. 22 Q On how many different occasions? 23 A I think, maybe two. One was many 24 years ago. One was somewhat recently. 25 Q Tell me about the one that happened</p>

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<p>1 recently.</p> <p>2 B. FINKELSTEIN</p> <p>3 Q It was an employee that was</p> <p>4 intoxicated at work, and the company was looking</p> <p>5 for termination, and the union and the gentleman</p> <p>6 fought termination.</p> <p>7 Q Was that testimony in response to a</p> <p>8 lawsuit or was it part of an arbitration</p> <p>9 proceeding?</p> <p>10 A It wasn't a lawsuit, no. I think it</p> <p>11 was just fighting the termination.</p> <p>12 Q And who took your testimony?</p> <p>13 A I don't recall the names.</p> <p>14 Q Was it an attorney?</p> <p>15 A Yes.</p> <p>16 Q Tell me about the other occasion which</p> <p>17 you testified.</p> <p>18 A It was many years ago, and I honestly</p> <p>19 don't even recall. It was like 15 years ago. I</p> <p>20 don't really recall what it was about.</p> <p>21 Q Was it with regard to a lawsuit?</p> <p>22 A I really don't recall. I don't even</p> <p>23 recall the name of the person. I remember it</p> <p>24 being many years ago when I first sort of started</p> <p>25 with Southern.</p>	<p>1 Spirits and Southern Glazer's Wine and Spirits as</p> <p>2 B. FINKELSTEIN</p> <p>3 Southern, okay?</p> <p>4 A Yes.</p> <p>5 Q So you will understand that if I just</p> <p>6 use the word Southern from now on?</p> <p>7 A Absolutely.</p> <p>8 Q Great. Have you done anything to</p> <p>9 prepare for today's deposition?</p> <p>10 A I had a meeting, you know, a</p> <p>11 preliminary meeting this past week.</p> <p>12 Q With whom?</p> <p>13 A With Timothy. I forget his last name.</p> <p>14 He is an attorney.</p> <p>15 Q Was it Timothy Barbetta?</p> <p>16 A Yes.</p> <p>17 Q For how long -- I don't want to know</p> <p>18 about what you spoke with him because that's</p> <p>19 confidential. How much time did you speak with</p> <p>20 Mr. Barbetta for?</p> <p>21 A About an hour and a half.</p> <p>22 Q Did you review any documents to</p> <p>23 prepare for today's deposition?</p> <p>24 A A couple of E-mails.</p> <p>25 Q Do you have these E-mails with you</p>
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<p>1 Q Have you been sued by anyone?</p> <p>2 B. FINKELSTEIN</p> <p>3 A No.</p> <p>4 Q Have you ever sued anyone for</p> <p>5 anything?</p> <p>6 A No.</p> <p>7 Q The matter that you testified for</p> <p>8 approximately 15 years ago, was that with regard</p> <p>9 to an employment issue?</p> <p>10 A I am trying to recall what exactly it</p> <p>11 was, and I mean as a manager it had to have been</p> <p>12 an employee situation, but I really don't recall</p> <p>13 any of the specifics of it.</p> <p>14 Q Did that relate to your employment at</p> <p>15 Southern or did that -- withdrawn. Did that</p> <p>16 relate to your employment at Southern Glazer's</p> <p>17 Wine and Spirits or did that relate to your</p> <p>18 employment for someone else?</p> <p>19 A It was Southern Wine at the time. Not</p> <p>20 Southern Glazer's.</p> <p>21 Q So it related to your employment with</p> <p>22 Southern Wine and Spirits?</p> <p>23 A Correct.</p> <p>24 Q For the purpose of today's deposition</p> <p>25 I am going to refer to both Southern Wine and</p>	<p>1 here today?</p> <p>2 B. FINKELSTEIN</p> <p>3 A No.</p> <p>4 Q What were these E-mails about?</p> <p>5 A To the best of my recollection it was</p> <p>6 about a day-to-day work situation that might have</p> <p>7 been going on, and when I read it actually I was</p> <p>8 cc'd on it. It wasn't sent to me specifically,</p> <p>9 and I didn't even recall it when I saw it, but</p> <p>10 nothing -- you know. I didn't see any problems</p> <p>11 with it. I think it was just an E-mail that</p> <p>12 related something that Maria and -- I don't know</p> <p>13 if it was John Wilkinson who was the director at</p> <p>14 the time were discussing, but it really did not</p> <p>15 involve me.</p> <p>16 Q Do you remember anything else about</p> <p>17 the E-mails that you reviewed?</p> <p>18 A No. It was two or three, and again it</p> <p>19 was nothing really that popped up at me as being</p> <p>20 any kind of situation or a problem.</p> <p>21 Q Was there anything that you saw in</p> <p>22 there that you thought was important to Maria's</p> <p>23 employment with Southern?</p> <p>24 A No.</p> <p>25 Q Are you still employed by Southern?</p>

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<p>1 A Yes.</p> <p>2 B. FINKELSTEIN</p> <p>3 Q When did you start working for them?</p> <p>4 A In 2006.</p> <p>5 Q So is that about 16 years ago?</p> <p>6 A Yes.</p> <p>7 Q How old are you?</p> <p>8 A That's personal. I am just kidding.</p> <p>9 I just turned 68.</p> <p>10 Q When do you plan on retiring?</p> <p>11 A Very good question. I would say</p> <p>12 within two years.</p> <p>13 Q Do you have any plans to leave</p> <p>14 Southern now?</p> <p>15 A No.</p> <p>16 Q Do you plan to finish out your career</p> <p>17 with Southern?</p> <p>18 A Yes.</p> <p>19 Q What is your current job title?</p> <p>20 A Day shift operations manager.</p> <p>21 Q How long have you had that title?</p> <p>22 A I would say four years.</p> <p>23 Q What title did you have before that?</p> <p>24 A Prior to that was midshift manager.</p> <p>25 Q Was that midshift operations manager?</p>	<p>1 Q Where is your office?</p> <p>2 B. FINKELSTEIN</p> <p>3 A It is in the warehouse just -- it is</p> <p>4 actually connected to the warehouse just outside</p> <p>5 of the warehouse. 20 steps away.</p> <p>6 Q Who else has an office there?</p> <p>7 A In the building or --</p> <p>8 Q Well, when you say 20 steps away from</p> <p>9 the warehouse itself is that at 345 Underhill</p> <p>10 where you have your office?</p> <p>11 A Correct.</p> <p>12 Q Who else has an office at 345</p> <p>13 Underhill besides you?</p> <p>14 A The night shift manager actually</p> <p>15 shares it with the midshift manager so they share</p> <p>16 an office. Who else downstairs? The safety</p> <p>17 director, the inventory control manager, and some</p> <p>18 delivery managers as well.</p> <p>19 Q Who is the inventory control manager?</p> <p>20 A Tonisha Durant.</p> <p>21 Q How long has she been the inventory</p> <p>22 control manager?</p> <p>23 A If I had to guess I would probably say</p> <p>24 about maybe eight to ten years.</p> <p>25 Q Did you know Ms. Durant before she</p>
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<p>1 A Yes.</p> <p>2 B. FINKELSTEIN</p> <p>3 Q For how long were you the midshift</p> <p>4 operations manager?</p> <p>5 A Probably also about four years.</p> <p>6 Q What title did you have before you</p> <p>7 were the midshift operations manager?</p> <p>8 A Night shift operations manager.</p> <p>9 Q For how long were you the night shift</p> <p>10 operations manager?</p> <p>11 A That was about from 2007 to, I guess,</p> <p>12 eight years ago to 2014.</p> <p>13 Q What title did you have before the</p> <p>14 night shift operations manager?</p> <p>15 A Um, I was a supervisor on overnights.</p> <p>16 Q When you were a supervisor on</p> <p>17 overnights were you working in the warehouse?</p> <p>18 A Yes.</p> <p>19 Q Were you a union member?</p> <p>20 A No.</p> <p>21 Q Have you always worked in the</p> <p>22 warehouse?</p> <p>23 A Yes.</p> <p>24 Q Do you have an office?</p> <p>25 A Yes.</p>	<p>1 was the inventory control manager?</p> <p>2 B. FINKELSTEIN</p> <p>3 A No.</p> <p>4 Q Did she work for Southern before she</p> <p>5 became the inventory control manager?</p> <p>6 A Yes. I believe she was in customer</p> <p>7 service, but I'm not 100 percent sure.</p> <p>8 Q Did anyone at Southern talk to you</p> <p>9 about Tonisha Durant becoming the inventory</p> <p>10 control manager?</p> <p>11 A No.</p> <p>12 Q And that's before she became the</p> <p>13 inventory control manager?</p> <p>14 A No.</p> <p>15 Q Before Tonisha Durant was the</p> <p>16 inventory control manager who was the inventory</p> <p>17 control manager?</p> <p>18 A Before that I believe it was Tom</p> <p>19 Barkey.</p> <p>20 Q Was Maria Suarez ever the inventory</p> <p>21 control manager?</p> <p>22 A I am not sure what Maria's title was.</p> <p>23 I'm not sure if she was a manager or a supervisor.</p> <p>24 Q Does Tonisha Durant supervise any</p> <p>25 employees?</p>

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<p style="text-align: right;">Page 13</p> <p>1 A Yes.</p> <p>2 B. FINKELSTEIN</p> <p>3 Q Who does she supervise?</p> <p>4 A You want the names?</p> <p>5 Q Yes.</p> <p>6 A Justin Veigh, Tatiana Herdocia, Ena</p> <p>7 Scott, and there is a new young guy working for</p> <p>8 her recently. I know his first name is Jax. I</p> <p>9 don't know his last name. That's it.</p> <p>10 Q How do you know that these -- how do</p> <p>11 you know Tonisha Durant manages these four</p> <p>12 individuals?</p> <p>13 A Well, I know they report to her. I</p> <p>14 know they work for her. I know she gives them</p> <p>15 their work every day. She analyzes their work.</p> <p>16 Q Is that based upon your personal</p> <p>17 knowledge of what you see and what you hear?</p> <p>18 A It is what I know.</p> <p>19 Q How do you know?</p> <p>20 A I have been there when they interacted</p> <p>21 on the business end, and I know when she is out</p> <p>22 very often they will come to me if she is out with</p> <p>23 any kind of problems.</p> <p>24 Q So you know that these four</p> <p>25 individuals report to Tonisha Durant because you</p>	<p style="text-align: right;">Page 15</p> <p>1 Herdocia, or Ena Scott?</p> <p>2 B. FINKELSTEIN</p> <p>3 A Um, I would say for a short period of</p> <p>4 time they reported to both of us, to Tatiana and</p> <p>5 myself.</p> <p>6 Q For a period of time did these three</p> <p>7 individuals report to both Tonisha Durant and to</p> <p>8 you?</p> <p>9 A I'm not sure when Maria left the</p> <p>10 company, but I would say it was probably a few</p> <p>11 months -- January of 2020? That's when Covid</p> <p>12 started, right? January or February?</p> <p>13 Q Early 2020.</p> <p>14 A Right.</p> <p>15 Q So in your capacity as day shift</p> <p>16 operations manager do you see what the cycle</p> <p>17 counters do on a daily basis?</p> <p>18 A Yes.</p> <p>19 Q Do you have any interactions with</p> <p>20 Tonisha Durant?</p> <p>21 A Yes.</p> <p>22 Q Describe for me the interactions that</p> <p>23 you have on a daily basis with the -- withdrawn.</p> <p>24 Describe for me the interactions that you have</p> <p>25 with Tonisha Durant as day shift operations</p>
<p style="text-align: right;">Page 14</p> <p>1 have seen them report to her and you have been</p> <p>2 B. FINKELSTEIN</p> <p>3 present when they reported to her?</p> <p>4 A Mm-hmm, yes.</p> <p>5 Q For how long have these four</p> <p>6 individuals -- withdrawn. What are the titles of</p> <p>7 those four individuals?</p> <p>8 A Cycle counters.</p> <p>9 Q For how long has Justin, Tatiana and</p> <p>10 Ena Scott reported to Tonisha Durant?</p> <p>11 A I would have to say for the past maybe</p> <p>12 four years.</p> <p>13 Q Is that your best approximation?</p> <p>14 A Yes, I would say that.</p> <p>15 Q Who did these three individuals,</p> <p>16 Justin Veigh, Tatiana Herdocia, and Ena Scott</p> <p>17 report to before they reported to Tonisha Durant?</p> <p>18 A Maria Suarez.</p> <p>19 Q So is it fair to say that Maria</p> <p>20 Suarez was their manager before Tonisha Durant</p> <p>21 became their manager?</p> <p>22 A Again, I am not sure what her actual</p> <p>23 title was so either manager or supervisor.</p> <p>24 Q Okay. Did you ever have any</p> <p>25 supervisory authority over Justin Veigh, Tatiana</p>	<p style="text-align: right;">Page 16</p> <p>1 manager?</p> <p>2 B. FINKELSTEIN</p> <p>3 A So when there are inventory issues</p> <p>4 that need to be looked into and resolved very</p> <p>5 often -- there are some rules and regulations when</p> <p>6 it comes to what cycle counters can and cannot do</p> <p>7 so they can't touch product, and they can't move</p> <p>8 product. They can strictly count. So if there is</p> <p>9 an inventory issue that needs to be looked into</p> <p>10 very often the departments will get in touch with</p> <p>11 me, and I will then have a warehouse -- the</p> <p>12 warehouse men get involved and look into the</p> <p>13 problem which means getting on a hi-lo possibly,</p> <p>14 pulling pallets out, doing the more physical end</p> <p>15 of it.</p> <p>16 Q How frequently do you interact with --</p> <p>17 withdrawn. How frequently do you speak with</p> <p>18 Tonisha Durant?</p> <p>19 A Daily. You mean how many times a day?</p> <p>20 Q Correct.</p> <p>21 A I would say anywhere between three and</p> <p>22 ten times a day on average.</p> <p>23 Q For how long have you spoken with</p> <p>24 Tonisha Durant between three and ten times per day</p> <p>25 at Southern?</p>

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<p>1 A How often have we been speaking?</p> <p>2 B. FINKELSTEIN</p> <p>3 Q Yes. For how long have you had this</p> <p>4 level of contact?</p> <p>5 A Since January of 2020, since I took</p> <p>6 that day shift position.</p> <p>7 Q And the midshift operations manager?</p> <p>8 When you were the midshift operations manager did</p> <p>9 you have any communications with Tonisha Durant?</p> <p>10 A Some but not nearly as much.</p> <p>11 Q How many times did you speak per week</p> <p>12 or per day with Tonisha Durant when you were the</p> <p>13 midshift operations manager?</p> <p>14 MS. CABRERA: Objection to the form of</p> <p>15 the question. You can answer it.</p> <p>16 A How often? There were times that we</p> <p>17 didn't speak at all because very often our shifts</p> <p>18 -- we did not see each other because of my hours,</p> <p>19 but E-mail wise? Maybe three to four times a</p> <p>20 week.</p> <p>21 Q Would you communicate about a specific</p> <p>22 topic?</p> <p>23 A Did Tonisha Durant and I speak about</p> <p>24 -- yes. It was always inventory issues.</p> <p>25 Q For what reasons would you communicate</p>	<p>1 Q When you were the night shift</p> <p>2 B. FINKELSTEIN</p> <p>3 operations manager what was your schedule?</p> <p>4 A When I was night shift? It was 6 p.m.</p> <p>5 until whenever we got the last case out the door.</p> <p>6 Sometimes 6 a.m. It was long hours.</p> <p>7 Q So just to clarify, when you were the</p> <p>8 night shift manager -- withdrawn. When you were</p> <p>9 the night shift operations manager your shift</p> <p>10 began at 6 p.m.?</p> <p>11 A Yes.</p> <p>12 Q And it ended when the last case was</p> <p>13 out the door?</p> <p>14 A Correct.</p> <p>15 Q And then when you became the midshift</p> <p>16 operations manager your shift was from 3 p.m. to 1</p> <p>17 a.m.</p> <p>18 A Correct.</p> <p>19 Q Except for the last year in which you</p> <p>20 were in that position in which you negotiated a</p> <p>21 schedule of 9 a.m. to 7 p.m?</p> <p>22 A Correct.</p> <p>23 Q And then when you became the day shift</p> <p>24 operations manager what was your schedule?</p> <p>25 A My schedule now is again about 7:30 in</p>
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<p>1 specifically with regard to the inventory?</p> <p>2 B. FINKELSTEIN</p> <p>3 A Um, if a warehouse man was not doing</p> <p>4 their job properly, for instance, and she found</p> <p>5 out what went wrong and who did it? She would</p> <p>6 then send me that information. If it was a member</p> <p>7 of my shift so that I would address the employee,</p> <p>8 retraining, counsel, coach.</p> <p>9 Q When you were the midshift operations</p> <p>10 manager what was your schedule?</p> <p>11 A It changed. Officially it was -- 3</p> <p>12 p.m. until 1:00 in the morning, and then the last</p> <p>13 year I had the position I negotiated a change of</p> <p>14 hours, and I was working 9 to 7. 9 a.m. to 7 p.m.</p> <p>15 Q When you were working from 9 a.m. to 7</p> <p>16 p.m. during the last year that you were the</p> <p>17 midshift operations manager how often did you</p> <p>18 communicate with Tonisha Durant?</p> <p>19 A Probably about the same. Three to</p> <p>20 four times a week. Most of the interactions</p> <p>21 between inventory control and warehouse manager</p> <p>22 the was done between the day shift manager and</p> <p>23 Tonisha Durant, so not that often.</p> <p>24 Q Who was the day shift manager?</p> <p>25 A At the time it was Jerome Danzi.</p>	<p>1 the morning. I try to get out by 6:30 at night.</p> <p>2 B. FINKELSTEIN</p> <p>3 Q Did you ever manage Justin Veigh?</p> <p>4 A I would say it was more of a</p> <p>5 supervisory situation, yes.</p> <p>6 Q When did you supervise Justin Veigh?</p> <p>7 A That was somewhere around 2018.</p> <p>8 Q Why did you supervise Justin Veigh in</p> <p>9 2018?</p> <p>10 A There was a change in my -- a short</p> <p>11 period when my title was kind of up in the air so</p> <p>12 before I became the day shift manager I was the</p> <p>13 midshift manager obviously, and then they brought</p> <p>14 in a new midshift manager. There was some</p> <p>15 situation going on between me and my boss, and I</p> <p>16 was pulled out of the midshift position and pretty</p> <p>17 much told to like figure it out. So I got</p> <p>18 involved in inventory control at that point so</p> <p>19 there was a short period of time where I was not</p> <p>20 the midshift or the day shift manager. I was a</p> <p>21 manager but of neither shift.</p> <p>22 Q And who was your manager at that time?</p> <p>23 A At that time it was Sean Kelly.</p> <p>24 Q Who is Sean Kelly?</p> <p>25 A He was the day shift manager for a</p>

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<p>1 short period of time. He is in Texas now, still</p> <p>2 B. FINKELSTEIN</p> <p>3 with the company.</p> <p>4 Q For how long did you supervise Justin</p> <p>5 Veigh in 2018?</p> <p>6 A I would say probably mid 2018 until</p> <p>7 January of 2020. Maybe a year and a half.</p> <p>8 Q Who gave you the authority to</p> <p>9 supervise Justin Veigh?</p> <p>10 A The VP Kevin Randall.</p> <p>11 Q Did Mr. Randall talk to you about</p> <p>12 supervising Justin Veigh?</p> <p>13 A Yes.</p> <p>14 Q And in addition to supervising Justin</p> <p>15 Veigh were you also going to supervise Tatiana</p> <p>16 Herdocia and Ena Scott?</p> <p>17 A Yes.</p> <p>18 Q Did you supervise Tatiana Herdocia and</p> <p>19 Ena Scott for the same period of time that you</p> <p>20 supervised Justin Veigh?</p> <p>21 A Yes.</p> <p>22 Q When for the first time did you speak</p> <p>23 to Mr. Randall about supervising cycle counters?</p> <p>24 A Right around that time. Mid 2018.</p> <p>25 Q Tell me about all you can remember</p>	<p>1 actually like tell you why because I still don't</p> <p>2 B. FINKELSTEIN</p> <p>3 get it. But there was some --</p> <p>4 Q All right. So what is your</p> <p>5 understanding of why you were without a title for</p> <p>6 that period?</p> <p>7 A I think there was a conflict between</p> <p>8 Mr. Randall and myself that I actually had no idea</p> <p>9 where it was coming from, and I think he was</p> <p>10 probably maybe getting bad information about me</p> <p>11 and decided to remove me from that position from</p> <p>12 the midshift position.</p> <p>13 Q When you were removed from the</p> <p>14 midshift operations position you effectively had</p> <p>15 no title with the company?</p> <p>16 A That's correct.</p> <p>17 Q Was that something that Mr. Randall</p> <p>18 decided?</p> <p>19 A Yes.</p> <p>20 Q And were you paid a salary during this</p> <p>21 period of time?</p> <p>22 A Yes.</p> <p>23 Q During this time period that you were</p> <p>24 without a title did you have a job description?</p> <p>25 A No.</p>
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<p>1 about that conversation.</p> <p>2 B. FINKELSTEIN</p> <p>3 A Okay. So again, I was the midshift</p> <p>4 manager. I was replaced by someone to take that</p> <p>5 position. I was left without a title for a number</p> <p>6 of months. And one of our biggest problems in</p> <p>7 that warehouse -- you want me to tell you about my</p> <p>8 conversation with Kevin?</p> <p>9 Q Correct.</p> <p>10 A All right. So I ended up working the</p> <p>11 inventory control, getting more knowledge, and I</p> <p>12 think Kevin recognized that I was doing -- you</p> <p>13 know, my work was improving things in the</p> <p>14 warehouse and asked me to take over that part of</p> <p>15 inventory for cycle counters.</p> <p>16 Q When were you without a title?</p> <p>17 A Um, mid 2018.</p> <p>18 Q Until when?</p> <p>19 A I would say probably the beginning of</p> <p>20 2019 so probably about six months.</p> <p>21 Q Why were you without a title for that</p> <p>22 period of time?</p> <p>23 A How much time do you have?</p> <p>24 Q I have all day unfortunately.</p> <p>25 A It is very difficult for me to</p>	<p>1 Q During the time period that you were</p> <p>2 B. FINKELSTEIN</p> <p>3 without a title did you have any job duties?</p> <p>4 A No.</p> <p>5 Q So can you please explain what you</p> <p>6 would do when you came to work during this</p> <p>7 six-month period?</p> <p>8 A That's a very good question. I</p> <p>9 realized it was like sink or swim so I had to find</p> <p>10 something that was going to make a difference, and</p> <p>11 I went out, and I decided where do we need the</p> <p>12 help most, and I knew our inventory was a bit of a</p> <p>13 mess. So I offered my help to Tonisha and in the</p> <p>14 process learned a lot about how that whole end of</p> <p>15 the business works.</p> <p>16 Q Is that something that you did on your</p> <p>17 own?</p> <p>18 A Yes.</p> <p>19 Q Was Kevin Randall involved in the your</p> <p>20 decision to offer your help to Tonisha?</p> <p>21 A No.</p> <p>22 Q Were any other managers at Southern</p> <p>23 involved in your decision to offer your help to</p> <p>24 Tonisha?</p> <p>25 A No.</p>

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<p style="text-align: right;">Page 25</p> <p>1 Q Describe for me what happened when you</p> <p>2 B. FINKELSTEIN</p> <p>3 went to offer your help to Tonisha?</p> <p>4 A She was open-armed about it. She was</p> <p>5 like absolutely. She will never turn away help.</p> <p>6 And then I pretty much -- with her help and some</p> <p>7 other people that I knew were masters and the</p> <p>8 system that we use as WMI system, just started to</p> <p>9 learn.</p> <p>10 Q When did you offer your help to</p> <p>11 Tonisha Durant?</p> <p>12 A It was probably early 2019 in that</p> <p>13 area.</p> <p>14 Q You testified earlier, and I want to</p> <p>15 clarify this, that from mid 2008 until the</p> <p>16 beginning of 2019 you were without a title?</p> <p>17 A No. In 2008 until --</p> <p>18 Q I'm sorry. 2018. Did I say 2008?</p> <p>19 A Yes.</p> <p>20 Q Sorry. I meant to say 2018.</p> <p>21 A Okay.</p> <p>22 Q So you just testified that from mid</p> <p>23 2018 until the beginning of 2019 you were without</p> <p>24 title?</p> <p>25 A I would say yes. That would be about</p>	<p style="text-align: right;">Page 27</p> <p>1 There were pallets all over the warehouse that</p> <p>2 B. FINKELSTEIN</p> <p>3 weren't in proper locations that you can visibly</p> <p>4 see walking through the warehouse. Other reports</p> <p>5 that come up when we short product to customers.</p> <p>6 You know, they order and we don't get certain</p> <p>7 items out to them. That's a result of inventory</p> <p>8 issues so there are a plethora.</p> <p>9 Q Was there a specific time when you</p> <p>10 noticed that these inventory issues got worse or</p> <p>11 developed?</p> <p>12 A Its been bad for as long as I can</p> <p>13 remember especially since we went -- even prior to</p> <p>14 WMI because everything was on paper then, but the</p> <p>15 WMI system was a struggle for everyone, and it</p> <p>16 created growing pains, created a lot of problems.</p> <p>17 Q Did the problems with inventory</p> <p>18 increase or decrease in your opinion when WMI was</p> <p>19 first implemented?</p> <p>20 A When it first was implemented it</p> <p>21 probably increased.</p> <p>22 Q And now the level of inventory issues</p> <p>23 or problems that there are, could you compare that</p> <p>24 at all to the way that it was before WMI was</p> <p>25 implemented?</p>
<p style="text-align: right;">Page 26</p> <p>1 right. Mid 2018. I am going by the best of my</p> <p>2 B. FINKELSTEIN</p> <p>3 recollection, but yes, that would be about right.</p> <p>4 It is about six months.</p> <p>5 Q And the first time you offered your</p> <p>6 help to Tonisha Durant was in January of 2019?</p> <p>7 A Maybe it was earlier. It definitely</p> <p>8 could have been earlier, yes.</p> <p>9 Q Did you approach Tonisha Durant</p> <p>10 shortly after you learned that you were without a</p> <p>11 title?</p> <p>12 A Yes.</p> <p>13 Q About how long after that?</p> <p>14 A Weeks.</p> <p>15 Q Is it fair to say then that it is more</p> <p>16 likely that you approached her in the middle of</p> <p>17 2018?</p> <p>18 A Yes, I would say.</p> <p>19 Q What problems did you think there were</p> <p>20 with the inventory when you approached Tonisha</p> <p>21 Durant?</p> <p>22 A There were issues at night that were a</p> <p>23 result of inventory issues during production. If</p> <p>24 inventory is incorrect there are issues that hit</p> <p>25 the production side, so that was evident to me.</p>	<p style="text-align: right;">Page 28</p> <p>1 A Well, before WMI was implemented it</p> <p>2 B. FINKELSTEIN</p> <p>3 was hard to see what the issues were because</p> <p>4 everything was on paper. So that would be a touch</p> <p>5 comparison. I mean, now compared to five years</p> <p>6 ago or so when we started up we are in much better</p> <p>7 shape.</p> <p>8 Q Now at Southern do you have the</p> <p>9 authority to discipline any employees?</p> <p>10 A I can start the ball rolling on a</p> <p>11 discipline, but I can't make a decision as to the</p> <p>12 final -- decision that is made.</p> <p>13 Q Describe how you get the ball rolling.</p> <p>14 A Well, if an employee is not following</p> <p>15 the rules and regs whether it is attendance issues</p> <p>16 or performance issues, et cetera, I coach and</p> <p>17 counsel and eventually if needed I start</p> <p>18 corrective action.</p> <p>19 Q How many employees now can you start</p> <p>20 the ball rolling for discipline?</p> <p>21 A I have about 40 on my shift.</p> <p>22 Q Who are these 40?</p> <p>23 A They are all warehouse men.</p> <p>24 Q Have you had disciplinary authority</p> <p>25 over anyone other than a warehouse man?</p>

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<p style="text-align: right;">Page 29</p> <p>1 A Yes.</p> <p>2 B. FINKELSTEIN</p> <p>3 Q When did you have disciplinary</p> <p>4 authority over someone else?</p> <p>5 A During that year and a half that I was</p> <p>6 supervising the cycle counters team I had the</p> <p>7 authority with them.</p> <p>8 Q And just to clarify, that year and a</p> <p>9 half that you had disciplinary authority over the</p> <p>10 cycle counting team, from mid 2018 until January</p> <p>11 of 2020?</p> <p>12 A Yes.</p> <p>13 Q Other than that period of time did you</p> <p>14 ever have disciplinary authority over anyone other</p> <p>15 than a warehouse man?</p> <p>16 A No.</p> <p>17 Q When you were the midshift operations</p> <p>18 manager how many warehouse men did you supervise?</p> <p>19 A Around the same amount of time 40</p> <p>20 years.</p> <p>21 Q And when you were the night shift</p> <p>22 operations manager how many warehouse men did you</p> <p>23 supervise?</p> <p>24 A It was approximately 80.</p> <p>25 Q When you were given disciplinary</p>	<p style="text-align: right;">Page 31</p> <p>1 position back in May 2018.</p> <p>2 B. FINKELSTEIN</p> <p>3 Q We already clarified that in mid 2018</p> <p>4 you were without a title, correct?</p> <p>5 A Okay. Mid or late 2018. I am really</p> <p>6 not sure of the dates, but I guess it would have</p> <p>7 been later. I believe I was without a title maybe</p> <p>8 for a few months, but I am really not sure of the</p> <p>9 dates.</p> <p>10 Q You testified earlier that you were</p> <p>11 without a title from the middle of 2018 until</p> <p>12 January of 2019. Is that correct to the best of</p> <p>13 your recollection?</p> <p>14 A To the best of my recollection.</p> <p>15 MS. CABRERA: Objection. Objection to</p> <p>16 the mischaracterization. He said several</p> <p>17 times about the time that he doesn't know</p> <p>18 the exact time. It is around that time, and</p> <p>19 you are presenting it to him that he said it</p> <p>20 was this exact time, and that is not what he</p> <p>21 has said several times in the record.</p> <p>22 MR. MOSER: Okay. He already answered</p> <p>23 so that's fine.</p> <p>24 Q So at what point did Kevin Randall</p> <p>25 talk to you about supervising the inventory</p>
<p style="text-align: right;">Page 30</p> <p>1 authority over the cycle counters was there</p> <p>2 B. FINKELSTEIN</p> <p>3 anything in writing that was given to you with</p> <p>4 regard to that assignment?</p> <p>5 A No.</p> <p>6 Q Have you seen any documents that shows</p> <p>7 or concerns your -- withdrawn. Have you seen any</p> <p>8 document that shows that you had disciplinary</p> <p>9 authority over the inventory control clerks?</p> <p>10 A A document? Not that I can recall.</p> <p>11 Q Have you ever seen a document that</p> <p>12 concerns your disciplinary authority over the</p> <p>13 inventory control clerks?</p> <p>14 A That concerns it?</p> <p>15 Q Such as an E-mail, a text message, or</p> <p>16 any other documents that concern your supervisory</p> <p>17 authority over the inventory control clerks?</p> <p>18 A Not that I can recall. In meetings,</p> <p>19 yes but verbally, yes, but I don't recall anything</p> <p>20 in writing.</p> <p>21 Q And the meetings that you had</p> <p>22 regarding your disciplinary authority over the</p> <p>23 inventory control clerks, when was the first</p> <p>24 meeting that you can recall having?</p> <p>25 A I would say it was just when I got the</p>	<p style="text-align: right;">Page 32</p> <p>1 control clerks?</p> <p>2 B. FINKELSTEIN</p> <p>3 A Again, it was probably sometime late</p> <p>4 2018.</p> <p>5 Q Is that your best approximation?</p> <p>6 A That would be my best approximation,</p> <p>7 yes.</p> <p>8 Q Tell me about that conversation,</p> <p>9 everything that you can remember about that</p> <p>10 conversation.</p> <p>11 A I really don't remember too much about</p> <p>12 it. I do remember that there were some issues</p> <p>13 with cycle counters, two in particular, and there</p> <p>14 was some action that needed to be taken, and if I</p> <p>15 believe that that is probably what started the</p> <p>16 conversation with Kevin, but I really don't</p> <p>17 remember the specifics.</p> <p>18 Q You said that action needed to be</p> <p>19 taken with regard to two specific cycle counters?</p> <p>20 A Yes.</p> <p>21 Q Which ones?</p> <p>22 A I don't remember their last names.</p> <p>23 They are no longer -- they were both terminated.</p> <p>24 One was Raoul. I don't remember his last name,</p> <p>25 and the other one was Anthony, and I don't</p>

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<p>1 remember his last name. 2 B. FINKELSTEIN 3 Q Who had been supervising the cycle 4 counters before Kevin Randall approached you? 5 A I believe it was Tonisha. 6 Q Is that based upon your personal 7 knowledge, what you saw and what you heard? 8 A No. I think that it had to be Tonisha 9 because she was the only one in that department at 10 that point. 11 Q She was the only one in which 12 department at that point? 13 A In inventory control. 14 Q So let's talk about the middle of 15 2018. In the middle of 2018 there was an 16 inventory control department? 17 A There has always been one. 18 Q In the middle of 2018 how many people 19 were in the inventory control department? 20 MS. CABRERA: I am going to object to 21 the form of the question. You can answer 22 the question. 23 A I think, four. 24 Q Who were they? 25 A That would be Tonisha, Ena Scott,</p>	<p>1 Q And then to the best of your 2 B. FINKELSTEIN 3 recollection in late 2018 either Tonisha Durant or 4 Kevin Randall approached you about supervising the 5 inventory control clerks, is that correct? 6 A Correct. 7 Q And tell me all that you can remember 8 about these conversations or that conversation. 9 MS. CABRERA: Objection. 10 A Again, there isn't much that I 11 remember about the specifics of the conversation 12 outside of just some gratitude from Tonisha 13 because she needed help. 14 Q Is Maria Suarez still employed by 15 Southern? 16 A To the best of my knowledge no. 17 Q How long after Maria Suarez was no 18 longer employed by Southern were you given 19 supervisory authority over the inventory control 20 clerks? 21 A I don't know the date of when she left 22 so it would be from that date until late 2018. 23 Q I will show you something. It is not 24 marked as an exhibit. This is a letter from the 25 Human Resources Department. And in the lower</p>
Page 34	Page 36
<p>1 Tatiana Herdocia, and Justin Veigh. 2 B. FINKELSTEIN 3 Q Describe for me the conversation that 4 you had with Kevin Randall in late 2018 about 5 supervising the inventory control clerks? 6 MS. CABRERA: Objection. 7 A Um, again I don't really recall the 8 exact conversation. I believe that he discussed 9 this with Toshina before he asked me to assume 10 that role. Honestly it might have been Toshina 11 that asked me. Kevin and I weren't really 12 speaking too much back then. 13 Q So to the best of your recollection 14 you were without a title in the beginning of mid 15 2018 and several weeks later you offered your help 16 to Tonisha Durant, correct? 17 A Yes. 18 Q After you offered your help to 19 Tonisha what did you do on a regular basis? 20 A Mostly started getting educated. I 21 didn't really dive into the department quite yet. 22 I just started learning, taking a deeper dive into 23 the program. 24 Q Into what program? 25 A WMI.</p>	<p>1 right-hand corner. There is a Bate stamp SGWS 2 B. FINKELSTEIN 3 001483. I would like you to take a minute to look 4 at this document, and then I will have a question 5 for you about it. 6 MS. CABRERA: Are you using this to 7 enter it as an exhibit, or are you using it 8 to refresh his recollection? 9 MR. MOSER: To refresh his 10 recollection. 11 A Okay. 12 Q Does this refresh your recollection as 13 to when Maria Suarez left the employment with 14 Southern? 15 A Well, it tells me April of 2018 so -- 16 Q Does that sound right to you? 17 A I would guess so. 18 Q And so from approximately April -- is 19 it fair to say from April of 2018 until late 2018 20 Tonisha Durant supervised the inventory control 21 clerks? I'm sorry. Is it fair to say that from 22 approximately April of 2018 until late 2018 23 Tonisha Durant supervised the cycle counters? 24 A To the best of my knowledge, yes. 25 Q And your authority to discipline and</p>

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<p>1 supervise the cycle counters began in late 2018?</p> <p>2 B. FINKELSTEIN</p> <p>3 A Yes, to the best of my recollection.</p> <p>4 Q And did you ever have to get the ball</p> <p>5 rolling with regard to any cycle counters?</p> <p>6 A Yes.</p> <p>7 Q Describe for me what happened.</p> <p>8 A Well, it was two cycle counters that</p> <p>9 we hired. If I had to guess -- again, it is a</p> <p>10 guess it was sometime early 2019 who had -- both</p> <p>11 of them, I think they were friends and they were</p> <p>12 having attendance issues, performance issues.</p> <p>13 Q Who hired these cycle counters?</p> <p>14 A I believe Kevin Randall hired both of</p> <p>15 them.</p> <p>16 Q Are you familiar with the WMI system?</p> <p>17 A Yes.</p> <p>18 Q What is your understanding of Tonisha</p> <p>19 Durant's role in WMI?</p> <p>20 MS. CABRERA: Objection. You can</p> <p>21 answer.</p> <p>22 A Her role in WMI or in inventory?</p> <p>23 Q In inventory.</p> <p>24 A And WMI?</p> <p>25 Q Yes.</p>	<p>1 A No. That I wouldn't know.</p> <p>2 B. FINKELSTEIN</p> <p>3 Q Is there an inventory manager in the</p> <p>4 accounting department?</p> <p>5 A I believe that there is.</p> <p>6 Q Who is that?</p> <p>7 A I don't know.</p> <p>8 Q Can you be more specific about to what</p> <p>9 your daily activities included from the time that</p> <p>10 you approached Tonisha Durant to offer her your</p> <p>11 help until January of 2020?</p> <p>12 A Well, eventually I worked directly</p> <p>13 with the cycle counters. I gave them their work</p> <p>14 every day. As they did their job I had to analyze</p> <p>15 the reports that came back to me that impacted</p> <p>16 inventory.</p> <p>17 Q What reports would they get back to</p> <p>18 you?</p> <p>19 A There were cycle counting reports when</p> <p>20 there are variances, so those are reports that</p> <p>21 would come back to me if there was a variance, if</p> <p>22 something was wrong.</p> <p>23 Q How big would the variances have to be</p> <p>24 to -- withdrawn. Is it fair to say that if the</p> <p>25 cycle counters did a physical count and there was</p>
Page 38	Page 40
<p>1 A Well, she is brilliant with it. She</p> <p>2 B. FINKELSTEIN</p> <p>3 handles pretty much every aspect of inventory</p> <p>4 control issues.</p> <p>5 Q Do you know who would be handling</p> <p>6 inventory control before Tonisha?</p> <p>7 A I believe it was Maria.</p> <p>8 Q Is there an accounting department at</p> <p>9 Southern?</p> <p>10 A Yes.</p> <p>11 Q In your role as operations manager in</p> <p>12 the warehouse do you deal with anyone from</p> <p>13 accounting?</p> <p>14 A Not really. Very infrequently.</p> <p>15 Q For what reasons would you have to</p> <p>16 deal with someone from accounting?</p> <p>17 A Occasionally they will ask me</p> <p>18 questions. I really don't contact them for</p> <p>19 anything. They will occasionally ask me questions</p> <p>20 about maybe a count on a specific product or to</p> <p>21 double check a specific product, but they work</p> <p>22 mostly with Tonisha.</p> <p>23 Q Okay. Do you know who from the</p> <p>24 accounting department works with Tonisha or deals</p> <p>25 with Tonisha primarily?</p>	<p>1 within a certain percentage of what was in the</p> <p>2 B. FINKELSTEIN</p> <p>3 system as being in inventory, that the system</p> <p>4 would automatically accept that count?</p> <p>5 A Correct.</p> <p>6 Q If it was -- if it was greater than</p> <p>7 that specified amount then the system would reject</p> <p>8 that cycle count?</p> <p>9 A It wouldn't reject it. It was greater</p> <p>10 or less than so anything -- yes. There is a</p> <p>11 threshold, and anything over or above is that</p> <p>12 threshold -- well, over or under that threshold</p> <p>13 would have to get analyzed. It would not get</p> <p>14 rejected.</p> <p>15 Q Okay. What was the threshold?</p> <p>16 A \$250. I mean, that is what it is now.</p> <p>17 I don't know if it was the same then.</p> <p>18 Q The \$250 that relates to the cost or</p> <p>19 the sale price?</p> <p>20 A Cost.</p> <p>21 Q Is it fair to say that the \$250 for</p> <p>22 some product could be less than a case?</p> <p>23 A Yes.</p> <p>24 Q What happens when the difference</p> <p>25 between the cycle counters' count and the amount</p>

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<p style="text-align: right;">Page 41</p> <p>1 that is recorded in inventory for a specific</p> <p>2 B. FINKELSTEIN</p> <p>3 location in the warehouse is greater than \$250?</p> <p>4 A It needs to be investigated.</p> <p>5 Q Describe to me how --</p> <p>6 A Um, there are a number of things that</p> <p>7 need to be done. There is a report that tells you</p> <p>8 if you are over or under on a dollar value of an</p> <p>9 item. That's for the year. So you would look at</p> <p>10 the report. Then you would do a full physical</p> <p>11 count of that item and every location in the</p> <p>12 warehouse.</p> <p>13 Q Who was responsible for doing the</p> <p>14 physical count of every location in the warehouse?</p> <p>15 A Um, cycle counters do it generally.</p> <p>16 Q If the cycle counters counted and</p> <p>17 they have a variance in excess of \$220 what</p> <p>18 happens next?</p> <p>19 A There could be a few things. I mean,</p> <p>20 when I had that position I would go on the floor</p> <p>21 and double check their counts. I would just</p> <p>22 eyeball them. If that strikes out we probably</p> <p>23 would not accept the counts and put a hold on it</p> <p>24 and enter another count for the following day.</p> <p>25 Q So what is a hold?</p>	<p style="text-align: right;">Page 43</p> <p>1 cycle counters?</p> <p>2 B. FINKELSTEIN</p> <p>3 A I had no idea that they were renamed.</p> <p>4 I was under the impression cycle counters are</p> <p>5 clerks.</p> <p>6 Q So is it your understanding that cycle</p> <p>7 counters are inventory control clerks? Is that</p> <p>8 fair to say?</p> <p>9 A Yes.</p> <p>10 Q So if I call them inventory control</p> <p>11 clerks you know what I am talking about?</p> <p>12 A Yes.</p> <p>13 Q Once you began supervising the</p> <p>14 inventory control clerks how many counts were they</p> <p>15 doing on a daily basis of -- when I say counts I</p> <p>16 mean locations in the warehouse?</p> <p>17 A On a daily basis individually?</p> <p>18 Q Yes.</p> <p>19 A I would have to say 200, 250.</p> <p>20 Q And how many cycle counters --</p> <p>21 withdrawn. How many inventory control clerks did</p> <p>22 you have when you were supervising them?</p> <p>23 A Um, on paper there were five of them.</p> <p>24 Q How many of them were doing their</p> <p>25 job?</p>
<p style="text-align: right;">Page 42</p> <p>1 A It is a rejection of the count. And</p> <p>2 B. FINKELSTEIN</p> <p>3 then it is a reentry to count it begin.</p> <p>4 Q So when you had the supervisory</p> <p>5 authority over the inventory control clerks, if</p> <p>6 they counted product and there was a variance in</p> <p>7 excess of \$250 you had the authority to reject</p> <p>8 that count and make them count it again?</p> <p>9 A Yes.</p> <p>10 Q How often did you do that?</p> <p>11 A Every day. Often.</p> <p>12 Q Is it fair to say that the cycle</p> <p>13 counters were not doing their jobs correctly that</p> <p>14 that would create a lot of work for you as their</p> <p>15 supervisor?</p> <p>16 A Yes.</p> <p>17 Q Describe how them not doing their job</p> <p>18 correctly would create work for you?</p> <p>19 A Well, it would require them to spend</p> <p>20 more time or myself to go out on the floor to</p> <p>21 check and double check.</p> <p>22 Q On average when you were supervising</p> <p>23 the inventory control clerks -- withdrawn. Do you</p> <p>24 understand that by inventory control clerks I mean</p> <p>25 inventory control clerks who were later renamed as</p>	<p style="text-align: right;">Page 44</p> <p>1 A Three.</p> <p>2 B. FINKELSTEIN</p> <p>3 Q So is it fair to say that you had</p> <p>4 another at least 600 to 650 locations --</p> <p>5 Is it fair to say that you had between 600 and</p> <p>6 750 locations in the warehouse being counted by</p> <p>7 the three clerks that were doing their job?</p> <p>8 A I would say on average, yes.</p> <p>9 Q For how many of those locations was</p> <p>10 there a variance?</p> <p>11 A (No answer).</p> <p>12 Q In excess of \$250?</p> <p>13 A I would say maybe 15 percent. 10 to</p> <p>14 15 percent or maybe more.</p> <p>15 Q What about the other two cycle</p> <p>16 counters? How were their counts in terms of --</p> <p>17 withdrawn. The two cycle counters who were not</p> <p>18 doing their job, how many locations were they</p> <p>19 counting on a given day?</p> <p>20 A That's a number of years ago. It is</p> <p>21 kind of hard to recall, but probably half of what</p> <p>22 they should have been doing.</p> <p>23 Q So between 100 to 125 locations?</p> <p>24 A Yes, I would say so.</p> <p>25 Q And what percentage of their counts</p>

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<p style="text-align: right;">Page 45</p> <p>1 were coming back with a variance in excess of</p> <p>2 B. FINKELSTEIN</p> <p>3 \$250?</p> <p>4 A Probably about the same, 10 to 15</p> <p>5 percent.</p> <p>6 Q Just to clarify, when you had three</p> <p>7 inventory clerks doing their job and the two</p> <p>8 inventory clerks who were not doing their job they</p> <p>9 were counting approximately between -- 800</p> <p>10 locations and 1,000 locations per day?</p> <p>11 A I would say that would be about max,</p> <p>12 yes.</p> <p>13 Q 10 to 15 percent of that would be on</p> <p>14 the low end, 80 locations per day where there</p> <p>15 would be a variance in excess of \$250, correct?</p> <p>16 A Yes.</p> <p>17 Q And on the high end if it would be --</p> <p>18 it could be up to 150 locations per day where the</p> <p>19 variance was in excess of \$150?</p> <p>20 A \$250.</p> <p>21 Q Let me say that again. Is it fair to</p> <p>22 say on the high end that it could be up to 150</p> <p>23 locations where the variance was in excess of \$250</p> <p>24 per day?</p> <p>25 A It could, but that would be high.</p>	<p style="text-align: right;">Page 47</p> <p>1 the variance can be in excess of \$250 would you</p> <p>2 B. FINKELSTEIN</p> <p>3 have time to do anything else?</p> <p>4 A Not too much.</p> <p>5 Q How would you whittle down the counts?</p> <p>6 A So when these reports come back there</p> <p>7 is another report that tells me that I am over or</p> <p>8 under for the year on each item in the warehouse.</p> <p>9 For instance, an item comes back as over 50</p> <p>10 cases? I look at that report. If that report</p> <p>11 shows me that I am short 50 cases then I accept</p> <p>12 that count so I have to analyze. You have to</p> <p>13 spend a few minutes to analyze every one of those</p> <p>14 variances and then make a decision before you go</p> <p>15 out counting.</p> <p>16 Q So before you actually physically</p> <p>17 count the inventory you had the decision to accept</p> <p>18 a particular variance?</p> <p>19 A Correct.</p> <p>20 Q Up to what amount was there a</p> <p>21 particular dollar value that you could accept a</p> <p>22 variance for?</p> <p>23 A Maybe \$3,000. Something in that area,</p> <p>24 I believe.</p> <p>25 Q When you were managing the inventory</p>
<p style="text-align: right;">Page 46</p> <p>1 That would be -- that would not be too often that</p> <p>2 B. FINKELSTEIN</p> <p>3 it would happen.</p> <p>4 Q On average how many counts per day was</p> <p>5 there a variance in excess of \$250?</p> <p>6 A I would say between 80 and 100.</p> <p>7 Q If you had to go to each one of those</p> <p>8 locations and count again for cycle counters can</p> <p>9 you approximate for me how long that would have</p> <p>10 taken you?</p> <p>11 A A day, an entire day.</p> <p>12 Q If you were required to recount all of</p> <p>13 the locations where the variance was in excess of</p> <p>14 \$250 would you have time to do anything else?</p> <p>15 A If that is all I did? Again,</p> <p>16 depending on how many there are and -- I mean,</p> <p>17 again, there is another report to look at where</p> <p>18 you can probably generally -- I can whittle down</p> <p>19 half of those counts based on our year end reports</p> <p>20 so generally I am left with about half of that</p> <p>21 that has to physically get counted.</p> <p>22 Q But if you had to separately go to</p> <p>23 each and every -- if you could not whittle it</p> <p>24 down, if you had to go to each and every location</p> <p>25 to double check the cycle counters' counts where</p>	<p style="text-align: right;">Page 48</p> <p>1 control clerks did you ever have to use a hi-lo?</p> <p>2 B. FINKELSTEIN</p> <p>3 A No.</p> <p>4 Q When you were managing the inventory</p> <p>5 control clerks did you ever use a cherry picker?</p> <p>6 A You are not allowed to. The answer is</p> <p>7 no because you can't. You are not allowed to.</p> <p>8 Q Why can't you use a cherry picker?</p> <p>9 A It is a union rule. We can't touch</p> <p>10 product. We can't use machines.</p> <p>11 Q If you wanted to physically count the</p> <p>12 product that was not located on the floor how</p> <p>13 would you do that?</p> <p>14 A I couldn't.</p> <p>15 Q Who would be able to do that?</p> <p>16 A A cycle counter.</p> <p>17 Q Let's say the cycle counter keeps on</p> <p>18 insisting that there is only X number of product</p> <p>19 there and it is not an area that is accessible by</p> <p>20 you and there is no explanation for the variance.</p> <p>21 What would you do?</p> <p>22 A I would have a warehouse men pull the</p> <p>23 pallet down unto the floor so we can take a visual</p> <p>24 on it.</p> <p>25 Q How long would that process take,</p>

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<p>1 getting the pallet from the elevated location to</p> <p>2 B. FINKELSTEIN</p> <p>3 the floor?</p> <p>4 A Five minutes, maybe.</p> <p>5 Q How many locations in the warehouse</p> <p>6 are accessible without a cherry picker?</p> <p>7 A I couldn't even take a guess on that.</p> <p>8 Q What percentage of the locations in</p> <p>9 the warehouse are accessible without a cherry</p> <p>10 picker?</p> <p>11 A I would say 20 percent, 30 percent.</p> <p>12 Q Are accessible --</p> <p>13 A On the floor.</p> <p>14 Q On the floor, okay. That would mean</p> <p>15 between 70 and 80 percent of the inventory is not</p> <p>16 accessible without a cherry picker, is that fair</p> <p>17 to say?</p> <p>18 A Yes. I would say in that area.</p> <p>19 Q Did Tonisha Durant have the authority</p> <p>20 to ask -- withdrawn. Did Tonisha Durant ever have</p> <p>21 the authority to direct warehouse men?</p> <p>22 A Unwritten, yes. They respect her and</p> <p>23 if Tonisha asks someone to do something they will</p> <p>24 do it.</p> <p>25 Q To your knowledge did Toshina Durant</p>	<p>1 there. I will go to that location, and I eyeball</p> <p>2 B. FINKELSTEIN</p> <p>3 it, and see is there really nothing there. It was</p> <p>4 like an obvious thing.</p> <p>5 Q Got you. Was there ever an instance</p> <p>6 where you had to personally physically recount the</p> <p>7 items that were in a location that was not located</p> <p>8 on the floor of the warehouse when you were</p> <p>9 supervising the inventory control clerks?</p> <p>10 A No, I couldn't.</p> <p>11 Q Was there ever an instance when you</p> <p>12 were supervising the inventory control clerks in</p> <p>13 which they could not resolve a variance in excess</p> <p>14 of \$250 at one of those elevated locations?</p> <p>15 A Sure.</p> <p>16 Q How many times?</p> <p>17 A Over the course of the year and a half</p> <p>18 or so?</p> <p>19 Q Yes.</p> <p>20 A Hundreds.</p> <p>21 Q What would you do when that happened?</p> <p>22 A I would go to Tonisha.</p> <p>23 Q What would Tonisha do?</p> <p>24 A I have no idea.</p> <p>25 Q So on paper who was the manager of the</p>
Page 50	Page 52
<p>1 ever have managerial authority over the warehouse</p> <p>2 B. FINKELSTEIN</p> <p>3 men?</p> <p>4 A To my knowledge, no.</p> <p>5 Q Was there ever an instance in which a</p> <p>6 warehouse men refused to take an instruction from</p> <p>7 Tonisha Durant?</p> <p>8 A To the best of my knowledge, no.</p> <p>9 Q Did you have the authority to direct</p> <p>10 warehouse men in the performance of their duties?</p> <p>11 A When I was working in inventory</p> <p>12 control?</p> <p>13 Q Yes.</p> <p>14 A Probably not.</p> <p>15 Q Okay. Was there ever an instance when</p> <p>16 you were working in inventory control --</p> <p>17 withdrawn. Was there ever an instance when you</p> <p>18 were working in inventory control when you had to</p> <p>19 personally physically count product in a location</p> <p>20 that was not accessible from the floor?</p> <p>21 A I would make attempts.</p> <p>22 Q What do you mean by making attempts?</p> <p>23 A So a cycle counter goes to a location</p> <p>24 that is not on the floor, maybe a few levels up,</p> <p>25 and he -- his report comes back. There is nothing</p>	<p>1 inventory control clerks during that year and a</p> <p>2 B. FINKELSTEIN</p> <p>3 half period?</p> <p>4 A Ultimately it was Tonisha.</p> <p>5 Q Was your supervisory role of the</p> <p>6 inventory control clerks ever put into writing?</p> <p>7 A I don't think that it was.</p> <p>8 Q Is it fair to say during the entire</p> <p>9 time that you supervised the inventory control</p> <p>10 clerks that Tonisha Durant was their manager?</p> <p>11 A She was the manager of the department,</p> <p>12 but she did not really manage the cycle counters.</p> <p>13 They reported to me.</p> <p>14 Q Did they have performance</p> <p>15 evaluations?</p> <p>16 A No. You are not allowed to do that.</p> <p>17 Q And after you stopped supervising the</p> <p>18 inventory control clerks who started supervising</p> <p>19 them at that point?</p> <p>20 A Tonisha.</p> <p>21 Q Does she still supervise the inventory</p> <p>22 control clerks today?</p> <p>23 A Yes.</p> <p>24 Q I know we went over this earlier.</p> <p>25 You don't recall if it was Kevin Randall or</p>

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<p style="text-align: right;">Page 53</p> <p>1 Tonisha Durant who gave you supervisory authority</p> <p>2 B. FINKELSTEIN</p> <p>3 over the inventory control clerks?</p> <p>4 A I think that they both discussed it</p> <p>5 together, but yes, I really don't recall who</p> <p>6 specifically told me.</p> <p>7 Q Tell me everything that you can recall</p> <p>8 about them giving you this supervisory authority.</p> <p>9 MS. CABRERA: Objection.</p> <p>10 A I really don't recall specifically</p> <p>11 what went on.</p> <p>12 Q How about towards the end when you</p> <p>13 stopped supervising the inventory control clerks?</p> <p>14 Why did you stop supervising them?</p> <p>15 A I believe around December of 2019 or</p> <p>16 January of 2020, and the day shift manager was</p> <p>17 relocating to Texas, and Kevin asked me if I would</p> <p>18 be interested in taking over that position.</p> <p>19 Q What shift were you working when you</p> <p>20 were supervising the inventory control clerks?</p> <p>21 A I was there at 7 a.m. and left at 5 or</p> <p>22 5:30 p.m.</p> <p>23 Q Did someone offer you the day shift</p> <p>24 manager position?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 55</p> <p>1 Q Okay. How would you assign the work?</p> <p>2 B. FINKELSTEIN</p> <p>3 A WMI creates a file for every item that</p> <p>4 over the last 24 hours came in with issues that</p> <p>5 triggers cycle counts.</p> <p>6 Q So it creates this file, right?</p> <p>7 A Yes.</p> <p>8 Q And then what happens next?</p> <p>9 A Then I extract the information out of</p> <p>10 the file, separate it by how many cycle counters</p> <p>11 that I have for that day, split it up, and then</p> <p>12 they go out and do their counting.</p> <p>13 Q Is there a regular -- does each</p> <p>14 location have to be counted on a specific schedule</p> <p>15 at least once every quarter, or once a month, or</p> <p>16 once a week?</p> <p>17 A For the entire warehouse had to be</p> <p>18 counted quarterly wall to wall.</p> <p>19 Q Is there still a physical inventory</p> <p>20 done every single quarter?</p> <p>21 A No.</p> <p>22 Q So how is the warehouse counted, the</p> <p>23 entire warehouse counted quarterly, if you can</p> <p>24 explain?</p> <p>25 A WMI keeps a record of every location</p>
<p style="text-align: right;">Page 54</p> <p>1 Q Who was that?</p> <p>2 B. FINKELSTEIN</p> <p>3 A Kevin Randall.</p> <p>4 Q Describe for me what happened when</p> <p>5 Sean Kelly left and when you were given the day</p> <p>6 shift manager position?</p> <p>7 A Um, so Kelly went on a business trip</p> <p>8 to Texas for Southern and was offered a position.</p> <p>9 Kevin called me into his office late December I</p> <p>10 believe it was and asked me if I would be</p> <p>11 interested in being promoted to the day shift ops</p> <p>12 manager position.</p> <p>13 Q Did that position have an increased</p> <p>14 salary?</p> <p>15 A Yes.</p> <p>16 Q What salary were you being paid when</p> <p>17 you were supervising the inventory control clerks?</p> <p>18 A I believe it was somewhere around 100.</p> <p>19 Q What was that increased to when you</p> <p>20 were given the day shift manager position?</p> <p>21 A About 140.</p> <p>22 Q When you were supervising the</p> <p>23 inventory control clerks you would assign them</p> <p>24 work to do?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 56</p> <p>1 that was or was not counted so by the end of the</p> <p>2 B. FINKELSTEIN</p> <p>3 quarter you make sure that half of the ones that</p> <p>4 were not counted are counted before the end of</p> <p>5 that quarter.</p> <p>6 Q What else would you do as the</p> <p>7 supervisor of the inventory control clerks?</p> <p>8 A Just to make sure that they are</p> <p>9 counting, that they are doing their jobs. There</p> <p>10 are other reports that tell me if someone had gaps</p> <p>11 between counts so it is supervising their</p> <p>12 performance, supervising their accuracy, make sure</p> <p>13 they are at work on time, making sure they are</p> <p>14 taking breaks when they are supposed to,</p> <p>15 attendance issues.</p> <p>16 Q Did you do anything else other than</p> <p>17 what you just described when you were managing the</p> <p>18 inventory control clerks?</p> <p>19 A Oh yeah.</p> <p>20 Q Can you describe for me what else that</p> <p>21 you did?</p> <p>22 A Sure. I dove deep into issues that</p> <p>23 were happening that were creating inventory</p> <p>24 problems. So if a shift -- one of the shift</p> <p>25 employees is making a mistake I will find out who</p>

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Page 57	Page 59
<p>1 it was. Send E-mails to their bosses, trying to</p> <p>2 B. FINKELSTEIN</p> <p>3 find route cause.</p> <p>4 Q Anything else?</p> <p>5 A I kind of have my hand on everything</p> <p>6 there. I will get involved in receiving issues.</p> <p>7 A lot of the warehouse men came to me for input</p> <p>8 since I am a senior guy there.</p> <p>9 Q When you came to Southern was Maria</p> <p>10 already there?</p> <p>11 A Yes, I believe so.</p> <p>12 Q Was she the manager of the inventory</p> <p>13 control department when you came to Southern?</p> <p>14 A No. I was working nights so I never</p> <p>15 saw her, but I believe Tom Barkey was the manager</p> <p>16 at that time.</p> <p>17 Q Do you know when Maria became the</p> <p>18 inventory control manager?</p> <p>19 A I don't.</p> <p>20 Q Do you know when Tonisha Durant became</p> <p>21 the inventory control manager?</p> <p>22 A I don't.</p> <p>23 Q Do you know why Maria Suarez no longer</p> <p>24 works for Southern?</p> <p>25 A I don't. I know that she wasn't</p>	<p>1 Q Do you know if it was 2015?</p> <p>2 B. FINKELSTEIN</p> <p>3 A I would guess maybe in that area.</p> <p>4 Q And what did she tell you about John</p> <p>5 Wilkinson?</p> <p>6 A I don't really recall any specifics.</p> <p>7 A lot of people complained about John Wilkinson,</p> <p>8 but she appeared to not be engaged in my opinion.</p> <p>9 Q Do you know why she wasn't happy?</p> <p>10 A I really don't know specifically.</p> <p>11 Q Do you recall any specific complaints</p> <p>12 that she had about John Wilkinson?</p> <p>13 MS. CABRERA: Objection.</p> <p>14 A Nothing specific.</p> <p>15 Q Other than complaining generally about</p> <p>16 John Wilkinson can you give me any better idea of</p> <p>17 what she was complaining about?</p> <p>18 MS. CABRERA: Objection.</p> <p>19 A I don't recall specifically.</p> <p>20 Q So what kind of complaints would she</p> <p>21 make?</p> <p>22 MS. CABRERA: Objection.</p> <p>23 A Again, nothing specifically.</p> <p>24 Q All that she was complaining about,</p> <p>25 you can't tell me anything that she was</p>
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<p>1 happy, but I don't know specifics.</p> <p>2 B. FINKELSTEIN</p> <p>3 Q How do you know she wasn't happy?</p> <p>4 A She would vent often.</p> <p>5 Q To you?</p> <p>6 A To anyone. Including me.</p> <p>7 Q What did she tell you?</p> <p>8 A She would usually complain about her</p> <p>9 boss John Wilkinson.</p> <p>10 Q During what period of time did she</p> <p>11 begin complaining to you?</p> <p>12 A As long as I can remember.</p> <p>13 Q When for the first time did your</p> <p>14 shifts overlap?</p> <p>15 A When I came to midshift so I would see</p> <p>16 her not often, not too often, really.</p> <p>17 Q When did you work that midshift again?</p> <p>18 A I will go back again. I am thinking</p> <p>19 maybe around 2014ish. That's a guess.</p> <p>20 Q Do you recall when Maria complained to</p> <p>21 you for the first time about John Wilkinson?</p> <p>22 A Not specifically, no.</p> <p>23 Q Can you tell me what year she first</p> <p>24 complained to you about John Wilkinson?</p> <p>25 A I really can't recall.</p>	<p>1 complaining about?</p> <p>2 B. FINKELSTEIN</p> <p>3 MS. CABRERA: Objection.</p> <p>4 A Nothing specific, no.</p> <p>5 Q And she appeared to be unhappy, is</p> <p>6 that fair to say?</p> <p>7 A I would say yes.</p> <p>8 Q What about her made you think she was</p> <p>9 unhappy?</p> <p>10 A Well, you know, the times that I had</p> <p>11 to work with her it was always a struggle. If I</p> <p>12 needed her help she was not helpful. She seemed</p> <p>13 to be angry. I had no idea why, so she was a</p> <p>14 difficult person to work with.</p> <p>15 Q Okay. So what about her made you</p> <p>16 think she was not happy other than what you just</p> <p>17 described to me?</p> <p>18 MS. CABRERA: Objection.</p> <p>19 Q Is there anything else other than what</p> <p>20 you just described to me that would lead you to</p> <p>21 believe that she was unhappy?</p> <p>22 A No, not really.</p> <p>23 Q Okay. So she was not helpful. She</p> <p>24 was angry?</p> <p>25 A Yes.</p>

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<p style="text-align: right;">Page 61</p> <p>1 Q And she was a difficult person to work 2 B. FINKELSTEIN 3 with? 4 A Yes. 5 Q And because of that you believed she 6 was unhappy? 7 A Yes. That would be accurate. 8 Q On how many occasions did you actually 9 have to work with her? 10 A I sort of stopped trying. So not too 11 many. 12 Q How many different occasions did you 13 work with Maria Suarez? 14 A Side by side? 15 Q Yes. 16 A Early on when I first came to midshift 17 a number of times, and then like I said I stopped 18 trying. 19 Q You testified earlier that the 20 midshift was from 3 p.m. to 1 a.m., is that 21 correct? 22 A Um, my shift was 3 p.m. to 1 a.m. 23 Q Yes. When you went to midshift? 24 A Right. 25 Q So when you went to midshift was your</p>	<p style="text-align: right;">Page 63</p> <p>1 her face to face, and that was the last time that 2 B. FINKELSTEIN 3 I asked her for help. I found different ways to 4 find my answers. 5 Q So tell me about this occasion on 6 which you brought the warehouse man into her 7 office. What do you remember about that occasion? 8 A I remember he was having a problem. 9 He had his RF gun with him, and I brought him in 10 and asked him to explain to Maria the problem he 11 was having. She basically started screaming that 12 I should know the answer to the -- the solution to 13 the problem so that was when I stopped going to 14 her. 15 Q Was this the first time that she had 16 yelled at you? 17 A She didn't yell at me. She just 18 yelled. She wasn't yelling at me. She just 19 yelled, starting yelling. If it was at me I 20 probably wouldn't have been -- it would not have 21 been good. 22 Q But did she ever yell at you? 23 A Um, I think probably, but I can't 24 recall anything specific. 25 Q Okay. So what was she yelling about?</p>
<p style="text-align: right;">Page 62</p> <p>1 shift from 3 p.m. to 1 a.m? 2 B. FINKELSTEIN 3 A That's the hours that I worked, yes. 4 Q And what were Maria's working hours 5 when you were in midshift? 6 A I believe -- I am really not sure. I 7 think it was like 9 to 5. 8 Q Describe the occasions on which you 9 had to work with Maria when you were at midshift? 10 A Well, especially when we went to WMI 11 and she had a little more knowledge than I did, 12 and I would have to -- I would have an inventory 13 issue on the warehouse side, and I would have to 14 ask her for help to try to figure it out, rectify 15 it. That was basically the extent. 16 Q On how many occasions did that happen? 17 A Maybe two or three, and I stopped 18 asking. 19 Q What did you ask for? 20 A Well, I could only remember one 21 specific occasion where I brought one of the 22 warehouse men into her office because he was 23 having a problem. It was inventory related, and 24 she got aggressive and to the point I had to ask 25 my employee to step out of the office and talk to</p>	<p style="text-align: right;">Page 64</p> <p>1 A That I should know the answer to the 2 B. FINKELSTEIN 3 -- I should know the resolution to the problem. 4 Q And what was the warehouse man doing 5 with the RF gun? 6 A I don't recall specifically. Working. 7 Q Were warehouse men supposed to have 8 have RF guns? 9 A Yes. They all have them. 10 Q What do they do with the RF guns? 11 A They locate product in the 12 warehouse. They use it for receiving. They use 13 it for any kind of product movement so all 14 inventory related. 15 Q What led you to believe that Maria was 16 the individual who you should speak to about the 17 issue with the RF gun? 18 A She -- that was her department, and 19 she had WMI knowledge at the time that I didn't 20 have yet. 21 Q When you say it was her department -- 22 A Well she ran -- again, I don't know 23 what Tonisha's involvement was at that point. I 24 didn't work with Tonisha so when I had to work 25 with someone from inventory it was Maria.</p>

16 (Pages 61 to 64)

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<p style="text-align: right;">Page 65</p> <p>1 Q Do you know what Tonisha's involvement</p> <p>2 B. FINKELSTEIN</p> <p>3 in WMI was?</p> <p>4 A Back then, no.</p> <p>5 Q What did you do after this incident in</p> <p>6 which Maria yelled?</p> <p>7 A I excused the warehouse man from her</p> <p>8 office. We had some words, and then I told her</p> <p>9 that I know who not to come to for help, and I</p> <p>10 walked out of her office.</p> <p>11 Q When you had issues in the future what</p> <p>12 did you do?</p> <p>13 A I didn't really have any issues in the</p> <p>14 future. We were cordial to each other. We didn't</p> <p>15 really -- businesswise we didn't really have too</p> <p>16 much interaction.</p> <p>17 Q Well, there was an issue. Which issue</p> <p>18 was the warehouse man having?</p> <p>19 A I don't recall.</p> <p>20 Q Do you recall anything about the issue</p> <p>21 that the warehouse man was having?</p> <p>22 A No.</p> <p>23 MS. CABRERA: Objection.</p> <p>24 Q So did it have to do with the RF gun?</p> <p>25 A It had to do with inventory which is</p>	<p style="text-align: right;">Page 67</p> <p>1 A Oh, no. I wasn't without a title at</p> <p>2 B. FINKELSTEIN</p> <p>3 that time.</p> <p>4 Q Okay. Do you remember what inventory</p> <p>5 issues that you went to Maria with?</p> <p>6 MS. CABRERA: Objection.</p> <p>7 A No, I don't.</p> <p>8 Q The first two times that you went to</p> <p>9 her, what happened?</p> <p>10 A I don't recall specifically.</p> <p>11 Q Did you have any inventory issues</p> <p>12 after your last -- withdrawn. Did you have any</p> <p>13 inventory issues after Maria yelled?</p> <p>14 A I am sure that I did.</p> <p>15 Q What did you do to resolve those</p> <p>16 inventory issues?</p> <p>17 A I don't recall. I mean, there was a</p> <p>18 number of people there that are experts at WMI, so</p> <p>19 I started to go to the others for assistance.</p> <p>20 Q Who did you go to?</p> <p>21 A Usually Sean Kelly.</p> <p>22 Q What was his title at that time?</p> <p>23 A He was -- I don't know if he was day</p> <p>24 manager. I don't think he was day manager yet. I</p> <p>25 think he was like business continuity. He was</p>
<p style="text-align: right;">Page 66</p> <p>1 the RF gun.</p> <p>2 B. FINKELSTEIN</p> <p>3 Q Did it have to do with the RF gun?</p> <p>4 A Like was the RF gun broken or</p> <p>5 something? No.</p> <p>6 Q Do you remember what question that you</p> <p>7 asked Maria or what issues you asked her to</p> <p>8 resolve?</p> <p>9 A I don't.</p> <p>10 Q On how many different occasions had</p> <p>11 you -- well, you said that you went to Maria two</p> <p>12 or three times with regard to inventory issues,</p> <p>13 correct?</p> <p>14 A Yes.</p> <p>15 Q Can you tell me over what period of</p> <p>16 time you went to her for the two or three issues?</p> <p>17 A I would say a few months.</p> <p>18 Q You had the day shift position or were</p> <p>19 you without a title when you went to Maria?</p> <p>20 MS. CABRERA: Objection.</p> <p>21 A I don't really recall where I was at</p> <p>22 at that point when that happened.</p> <p>23 Q So you could have had the day</p> <p>24 operations manager position or you could have been</p> <p>25 without a title?</p>	<p style="text-align: right;">Page 68</p> <p>1 like an expert on everything actually so he was</p> <p>2 B. FINKELSTEIN</p> <p>3 like my go to, especially WMI, pretty much any WMI</p> <p>4 issue that I had.</p> <p>5 Q Did Mr. Kelly have knowledge of WMI</p> <p>6 before he began working at the Syosset warehouse?</p> <p>7 A I don't know. But he was brilliant.</p> <p>8 Q Was Mr. Kelly the cause of any</p> <p>9 conflict between you and Mr. Randall?</p> <p>10 A I don't know.</p> <p>11 Q So at the time that Maria yelled at</p> <p>12 you who was your manager?</p> <p>13 A I believe it was John Wilkinson. It</p> <p>14 had to be, yes.</p> <p>15 Q Did you tell John Wilkinson about what</p> <p>16 had --</p> <p>17 A I am sure that I did.</p> <p>18 Q And what did he respond to you?</p> <p>19 A I don't recall.</p> <p>20 Q And on the two to three occasions that</p> <p>21 you actually went to Maria with inventory issues</p> <p>22 was John Wilkinson your manager during all of</p> <p>23 these three occasions?</p> <p>24 A At that point, yes. He was the</p> <p>25 director of operations so yes.</p>

17 (Pages 65 to 68)

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<p>1 Q After you spoke with Maria would you</p> <p>2 B. FINKELSTEIN</p> <p>3 speak with John Wilkinson?</p> <p>4 A Would I speak to him like right after?</p> <p>5 Q Or shortly thereafter?</p> <p>6 A Possibly.</p> <p>7 Q Was Maria good at her job?</p> <p>8 A That's subjective. I do not think she</p> <p>9 was good at her job.</p> <p>10 Q Why not?</p> <p>11 A Well, especially after I had her job I</p> <p>12 realized that -- first of all, our inventory was</p> <p>13 still a bit of a mess when I got into that</p> <p>14 position. She never hit the floor which always</p> <p>15 amazed me. It was very difficult to do that job</p> <p>16 without hitting the floor, and she was difficult</p> <p>17 to work with.</p> <p>18 Q So let me just go through this. You</p> <p>19 had a belief she was not good at her job. Was</p> <p>20 that only after you began doing her job?</p> <p>21 A No. I think it was even before that.</p> <p>22 Q Before you began doing Maria's job --</p> <p>23 well, how did you know you were doing Maria's job?</p> <p>24 A Um, I just started to get involved in</p> <p>25 inventory and slowly started learning more. I</p>	<p>1 hard to answer that. I think I just sort of went</p> <p>2 B. FINKELSTEIN</p> <p>3 with it as I started doing it.</p> <p>4 Q If you did not know what the</p> <p>5 requirements of her job was how could you express</p> <p>6 an opinion as to whether she was good at her job?</p> <p>7 A I think part of it is interaction. I</p> <p>8 think that's a very important part of doing a job</p> <p>9 well, being approachable.</p> <p>10 Q So would it be her demeanor?</p> <p>11 A Yes. I think that was a big problem.</p> <p>12 Q Other than her demeanor is there any</p> <p>13 other reason why you believe she wasn't good at</p> <p>14 her job?</p> <p>15 A Firsthand, no.</p> <p>16 Q Other than firsthand is there any</p> <p>17 other reason why other than her demeanor you</p> <p>18 believe she wasn't good at her job?</p> <p>19 A The only thing I could tell you is</p> <p>20 that there on the cycle count side the cycle</p> <p>21 counters used to complain to me they are counting</p> <p>22 the same locations every day which made me realize</p> <p>23 that she is not investigating and processing.</p> <p>24 Q Which cycle counters were telling you</p> <p>25 that they were counting the same location every</p>
Page 70	Page 72
<p>1 like to learn. So I don't think it was like a</p> <p>2 B. FINKELSTEIN</p> <p>3 planned thing for me, and I wouldn't say I was</p> <p>4 doing her job. I was doing some of the</p> <p>5 responsibilities that she had done when it comes</p> <p>6 to working with cycle counters but a lot more than</p> <p>7 that.</p> <p>8 Q How did you know what her</p> <p>9 responsibilities were as inventory control</p> <p>10 manager?</p> <p>11 A I didn't know until I started diving</p> <p>12 into inventory control.</p> <p>13 Q What led you to believe that -- well,</p> <p>14 what did you learn about what her duties were when</p> <p>15 you began diving into inventory control?</p> <p>16 A What did I learn about that position?</p> <p>17 Q Yes.</p> <p>18 Q That it's probably the most important</p> <p>19 thing, that it is very time sensitive, you know?</p> <p>20 Problems need to be resolved like immediately.</p> <p>21 Q Did you learn anything about what her</p> <p>22 job was when you became involved in inventory?</p> <p>23 A Again, I didn't really know</p> <p>24 specifically what -- if she even had a job, a list</p> <p>25 of what her requirements were, so it is kind of</p>	<p>1 day?</p> <p>2 B. FINKELSTEIN</p> <p>3 A Pretty much all of them.</p> <p>4 Q Maria was their boss, correct?</p> <p>5 A Was their what?</p> <p>6 Q Was their boss?</p> <p>7 A Yes.</p> <p>8 Q How did you know they were counting</p> <p>9 the same locations every day?</p> <p>10 A They told me.</p> <p>11 Q Other than them telling you?</p> <p>12 A I don't know.</p> <p>13 Q So do you know if they were actually</p> <p>14 counting the same locations every day?</p> <p>15 A I guess not.</p> <p>16 Q So other than what you have already</p> <p>17 described, her demeanor and what the cycle</p> <p>18 counters told you, is there any other reason why</p> <p>19 you believe Maria was not good at her job?</p> <p>20 A No.</p> <p>21 Q How many warehouse men are employed</p> <p>22 at the Syosset, New York location?</p> <p>23 A Now?</p> <p>24 Q Yes.</p> <p>25 A Approximately 160.</p>

18 (Pages 69 to 72)

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<p>1 Q If we go back to 2014, approximately</p> <p>2 B. FINKELSTEIN</p> <p>3 how many warehouse men were employed in 2014?</p> <p>4 A I would say maybe there were 20 more</p> <p>5 back then.</p> <p>6 Q Is there turnover in the warehouse men</p> <p>7 position?</p> <p>8 A No.</p> <p>9 Q Is there some turnover in the</p> <p>10 warehouse position?</p> <p>11 A Not much.</p> <p>12 Q So how many female warehouse men were</p> <p>13 there?</p> <p>14 A Warehouse people.</p> <p>15 Q Warehouse people?</p> <p>16 A None.</p> <p>17 Q And that would be for the entire time</p> <p>18 that you were employed by Southern in Syosset?</p> <p>19 A I think we might have had one at one</p> <p>20 point.</p> <p>21 Q Are you guessing?</p> <p>22 A I am guessing. I sort of remember one</p> <p>23 coming in and making it for one night.</p> <p>24 Q Other than that person who may have</p> <p>25 come in and made it through one night were there</p>	<p>1 A We have had supervisors but not</p> <p>2 B. FINKELSTEIN</p> <p>3 warehouse.</p> <p>4 Q Okay. So in all of your years at</p> <p>5 Southern you never had a single woman apply for a</p> <p>6 warehouse position?</p> <p>7 A To me that's correct.</p> <p>8 Q Do you know whether any women were</p> <p>9 filtered out who had applied before they got to</p> <p>10 you?</p> <p>11 A I do not.</p> <p>12 Q Were you the hiring manager?</p> <p>13 A When they had overnights, yes.</p> <p>14 Q Did you have any say other women</p> <p>15 applicants actually made it to the interview</p> <p>16 process?</p> <p>17 A Um, back then it has changed since,</p> <p>18 but back then, yes.</p> <p>19 Q What say did you have over what</p> <p>20 applicants made it to the interview process?</p> <p>21 A I read resumes and let HR know who to</p> <p>22 send for an interview.</p> <p>23 Q Would you get the resumes from HR?</p> <p>24 A I believe so. It is a long time ago.</p> <p>25 Q So you would get the resumes from HR.</p>
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<p>1 any other women hired as -- withdrawn. Were there</p> <p>2 B. FINKELSTEIN</p> <p>3 any other women who worked as warehouse people at</p> <p>4 the Syosset location during the entire time that</p> <p>5 you were employed?</p> <p>6 A There are no women applicants so the</p> <p>7 answer is no to that.</p> <p>8 Q Why were there were no women</p> <p>9 applicants?</p> <p>10 A I had never had women applicants come</p> <p>11 in, and especially on the overnights -- you have</p> <p>12 do come in for overnights first.</p> <p>13 Q If Elizabeth Toohig testified that</p> <p>14 women actually applied for that position what</p> <p>15 would you say to that?</p> <p>16 A Women have applied for it? They never</p> <p>17 made it to the warehouse. I have never had a</p> <p>18 women apply.</p> <p>19 Q So women may have applied, but they</p> <p>20 never made it to the warehouse?</p> <p>21 A If that's what you are saying. To the</p> <p>22 best of my knowledge I have never had a woman</p> <p>23 applicant come in for an interview or be</p> <p>24 considered for a job.</p> <p>25 Q Okay.</p>	<p>1 You would pick the ones that you wanted to</p> <p>2 B. FINKELSTEIN</p> <p>3 interview?</p> <p>4 A Yes.</p> <p>5 Q And they would arrange those</p> <p>6 interviews?</p> <p>7 MS. CABRERA: Objection to the form of</p> <p>8 the question.</p> <p>9 Q Would they arrange those interviews?</p> <p>10 A I don't recall. I don't remember if</p> <p>11 it was them that arranged it or I arranged it.</p> <p>12 Q Okay. How many individual warehouse</p> <p>13 people did you hire during your employment at</p> <p>14 Southern?</p> <p>15 A I would have to say maybe 20 or 30.</p> <p>16 Q Did any female ever supervise</p> <p>17 warehouse men at Southern's Syosset location?</p> <p>18 A Yes. We have one currently who has</p> <p>19 been here for a number of years if you want her</p> <p>20 name.</p> <p>21 Q Yes.</p> <p>22 A Esther King. We had another one maybe</p> <p>23 about -- I don't know. I am guessing about eight</p> <p>24 years ago. Linda -- I don't remember her last</p> <p>25 name. She was with us for maybe two or three</p>

19 (Pages 73 to 76)

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<p>1 years.</p> <p>2 B. FINKELSTEIN</p> <p>3 Q What is Esther King's job?</p> <p>4 A She is a supervisor. She is a WMI</p> <p>5 super user. She is my Sean Kelly.</p> <p>6 Q What is a WMI super user?</p> <p>7 A It is a terminology that they use for</p> <p>8 someone that knows the system inside and out.</p> <p>9 Q Did she receive any training in this</p> <p>10 system?</p> <p>11 A She did through Sean Kelly actually.</p> <p>12 Q How many warehouse men does she</p> <p>13 supervise?</p> <p>14 A All of the warehouse men on day shift</p> <p>15 know that she is one of the supervisors, and they</p> <p>16 all to some degree report to her, but specifically</p> <p>17 she has got probably about 12 that report strictly</p> <p>18 to her.</p> <p>19 Q So she has 12 direct reports?</p> <p>20 A Yes.</p> <p>21 Q Who are warehouse men?</p> <p>22 A Yes.</p> <p>23 Q And when was she hired?</p> <p>24 A It has to be about seven years ago I</p> <p>25 would guess.</p>	<p>1 believe that we would stop anyone from applying</p> <p>2 B. FINKELSTEIN</p> <p>3 and getting a position.</p> <p>4 Q What leads you to believe that?</p> <p>5 A I believe we never said no to anyone.</p> <p>6 We never had an applicant to the best of my</p> <p>7 knowledge come in, a female, but I don't believe</p> <p>8 that anyone would say no, you are a female. You</p> <p>9 are not getting a job. I don't believe that is</p> <p>10 the culture in the company.</p> <p>11 Q Is warehouse experience required to</p> <p>12 become a warehouse men?</p> <p>13 A No.</p> <p>14 Q Would your opinion change if I told</p> <p>15 you that Elizabeth Toohig testified that women</p> <p>16 were actually disqualified from the position for</p> <p>17 not having warehouse experience?</p> <p>18 A I would be surprised.</p> <p>19 Q Are you aware that there were lawsuits</p> <p>20 against Southern?</p> <p>21 A Am I aware of lawsuits?</p> <p>22 Q Other than this one.</p> <p>23 A Um, vaguely.</p> <p>24 Q Do you know what those lawsuits were</p> <p>25 about?</p>
Page 78	Page 80
<p>1 Q Okay. Is it true that anyone who</p> <p>2 B. FINKELSTEIN</p> <p>3 applies for the warehouse position must start</p> <p>4 throwing cases at night?</p> <p>5 A Yes.</p> <p>6 Q And why is that?</p> <p>7 A That's a union agreement so any new</p> <p>8 employees has to come in on the overnight pretty</p> <p>9 much has to go on a line to throw.</p> <p>10 Q Is that a union rule?</p> <p>11 A Union rule? When it comes to starting</p> <p>12 at nights, yes. It is a union rule.</p> <p>13 Q Do you think a rule like that would</p> <p>14 dissuade women from applying for the warehouse</p> <p>15 position?</p> <p>16 A It might. I am sure it dissuades men</p> <p>17 as well.</p> <p>18 Q Do you think it disproportionately</p> <p>19 dissuades women?</p> <p>20 A I couldn't answer that. It is a tough</p> <p>21 shift no matter what your gender is.</p> <p>22 Q So you think that it would affect men</p> <p>23 and women equally, throwing cases at night?</p> <p>24 A I would guess. Like I said, it is a</p> <p>25 tough shift. It is a tough job, but I don't</p>	<p>1 A That, I don't know.</p> <p>2 B. FINKELSTEIN</p> <p>3 Q Do you know if those lawsuits were</p> <p>4 about women not being given the warehouse men</p> <p>5 classification?</p> <p>6 A I do know about that.</p> <p>7 Q How do you know about that?</p> <p>8 A Um, Ena Scott told me.</p> <p>9 Q Are any cycle counters allowed to use</p> <p>10 cherry pickers now?</p> <p>11 A They always have.</p> <p>12 Q So a cycle counter can use a cherry</p> <p>13 picker today?</p> <p>14 A Always could, yes.</p> <p>15 Q And cycle counters can use hi-los</p> <p>16 today?</p> <p>17 A No.</p> <p>18 Q Do cycle counters or inventory control</p> <p>19 clerks wear safety gear?</p> <p>20 A If they are on a cherry picker, yes.</p> <p>21 Q Do they work on nights in the</p> <p>22 warehouse?</p> <p>23 A Sure.</p> <p>24 Q Are they expected to move cases</p> <p>25 sometimes in order to properly count product?</p>

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<p style="text-align: right;">Page 81</p> <p>1 A They are not supposed to, no.</p> <p>2 B. FINKELSTEIN</p> <p>3 Q Have they ever been expected to move</p> <p>4 cases?</p> <p>5 A No.</p> <p>6 Q Have they ever been permitted to use</p> <p>7 cases in order to count product?</p> <p>8 A No.</p> <p>9 Q What is the basis for your knowledge?</p> <p>10 A It's a union rule that only warehouse</p> <p>11 men can touch and move cases unless it is to</p> <p>12 prevent breakage. That's the only caveat.</p> <p>13 Q So if there was a rule that permitted</p> <p>14 inventory control clerks to move up to five cases</p> <p>15 per location, have you ever heard of a rule like</p> <p>16 that?</p> <p>17 A No.</p> <p>18 Q A rule like that ever in existence?</p> <p>19 A Not to the best of my knowledge, no.</p> <p>20 That doesn't mean there isn't one, but I'm not</p> <p>21 aware of it.</p> <p>22 Q Do you remember any specific</p> <p>23 conversations that you had with Maria Suarez other</p> <p>24 than the two to three conversations that you</p> <p>25 mentioned already?</p>	<p style="text-align: right;">Page 83</p> <p>1 operations side?</p> <p>2 B. FINKELSTEIN</p> <p>3 A I believe it was Larry Laspinoza, and</p> <p>4 there was someone else. I'm sorry. No. It may</p> <p>5 have been Larry. There was Larry Callahan was</p> <p>6 definitely one. He was a manager. If I remember</p> <p>7 correctly maybe Larry Laspinoza was part of that</p> <p>8 five people. I don't really recall.</p> <p>9 Q Can you tell me everything that you</p> <p>10 remember about your conversation with Ena Scott</p> <p>11 about the lawsuit?</p> <p>12 A Well, its been -- its been years of</p> <p>13 her venting to me, and I think a lot of people.</p> <p>14 And that she should be getting warehouse pay. I</p> <p>15 believe that's the gist of her comments.</p> <p>16 Q Do you recall anything else?</p> <p>17 A The only other thing is that she said</p> <p>18 -- I think she wanted to get an increase in salary</p> <p>19 because she was doing like the lead work. I</p> <p>20 forget the term she used like foreman work, doing</p> <p>21 foreman work.</p> <p>22 Q A checker?</p> <p>23 A No. She didn't say anything about a</p> <p>24 checker that I recall.</p> <p>25 Q Okay. And how was Ena doing foreman</p>
<p style="text-align: right;">Page 82</p> <p>1 A Conversations with her?</p> <p>2 B. FINKELSTEIN</p> <p>3 Q Yes.</p> <p>4 A Basically hi, how are you? Good</p> <p>5 morning. Good night.</p> <p>6 Q Okay. How would you describe Maria's</p> <p>7 personality?</p> <p>8 A Difficult.</p> <p>9 Q Are you aware that there had been</p> <p>10 layoffs in April of 2018?</p> <p>11 A Yes.</p> <p>12 Q Do you know what those layoffs were</p> <p>13 part of?</p> <p>14 A I think it was -- I wasn't involved in</p> <p>15 any of that, but I think it was a reduction of the</p> <p>16 forms. I know a lot of people were getting</p> <p>17 nervous, and I know a few people that were laid</p> <p>18 off at that time.</p> <p>19 Q Were there a total of five people let</p> <p>20 go as a result of that reduction in the force?</p> <p>21 A I don't know if I -- I know one other</p> <p>22 one for sure. Maybe two other ones in the</p> <p>23 operations side, but I don't know -- other than</p> <p>24 that --</p> <p>25 Q Which other ones do you know from the</p>	<p style="text-align: right;">Page 84</p> <p>1 work?</p> <p>2 B. FINKELSTEIN</p> <p>3 A I have no idea.</p> <p>4 Q During the time period that Maria</p> <p>5 Suarez worked at Southern did you ever supervise</p> <p>6 any inventory control clerks?</p> <p>7 A No.</p> <p>8 Q During the time period that Maria</p> <p>9 Suarez was at Southern did you ever have any</p> <p>10 disciplinary authority over inventory control</p> <p>11 clerks?</p> <p>12 A No.</p> <p>13 Q Do you know the reasons why Tonisha</p> <p>14 Durant is inventory control manager today?</p> <p>15 A Other than being very good at it, no.</p> <p>16 Q Do you have any knowledge of the</p> <p>17 reasons why Maria Suarez no longer works for</p> <p>18 Southern?</p> <p>19 A I don't.</p> <p>20 Q Have you ever had a conversation with</p> <p>21 Tonisha Durant about Maria Suarez?</p> <p>22 A No.</p> <p>23 Q Have you ever had a conversation with</p> <p>24 Kevin Randall about Maria Suarez?</p> <p>25 A No.</p>

21 (Pages 81 to 84)

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<p style="text-align: right;">Page 85</p> <p>1 Q Have you ever had a conversation with</p> <p>2 B. FINKELSTEIN</p> <p>3 any of your other coworkers at Southern about</p> <p>4 Maria Suarez?</p> <p>5 A No.</p> <p>6 Q Have you ever had a conversation with</p> <p>7 Tonisha Durant about this case?</p> <p>8 A No.</p> <p>9 Q Have you had a conversation with Kevin</p> <p>10 Randall about this case?</p> <p>11 A Outside of me saying that I have to be</p> <p>12 here today? No.</p> <p>13 Q So he told you that you would have to</p> <p>14 be here today?</p> <p>15 MS. CABRERA: Objection. That's not</p> <p>16 what he said.</p> <p>17 A I told him I have to be here today.</p> <p>18 Q Okay. When did you tell him that?</p> <p>19 A Last week.</p> <p>20 Q So you told him that you would have to</p> <p>21 be here for a deposition today, so you wouldn't be</p> <p>22 at work?</p> <p>23 A Right.</p> <p>24 Q What did he say to you?</p> <p>25 A "Are you coming in before the</p>	<p style="text-align: right;">Page 87</p> <p>1 Q How did you learn that you were</p> <p>2 B. FINKELSTEIN</p> <p>3 working without a classification?</p> <p>4 A When I was called into Kevin Randall's</p> <p>5 office and told that my replacement was starting</p> <p>6 an hour later, and I asked him if I was being</p> <p>7 terminated, and he said no, and I said okay, so</p> <p>8 what is my position? And he said I don't know,</p> <p>9 figure it out. You can't make that stuff up.</p> <p>10 I love him now by the way but not so much then.</p> <p>11 Q Who was your replacement?</p> <p>12 A Peter Lazar.</p> <p>13 Q Is Peter Lazar still working for</p> <p>14 Southern?</p> <p>15 A Yes.</p> <p>16 Q Do you know when he was hired?</p> <p>17 A I don't know. It was like -- sometime</p> <p>18 in 2019. I guess something like that. I am not</p> <p>19 sure.</p> <p>20 Q You mentioned earlier that you were</p> <p>21 without a classification beginning in the middle</p> <p>22 of 2018?</p> <p>23 A Then that's when it was. The dates</p> <p>24 are very vague to me. I am 68.</p> <p>25 Q But you are in great health.</p>
<p style="text-align: right;">Page 86</p> <p>1 deposition?"</p> <p>2 B. FINKELSTEIN</p> <p>3 Q What did you report?</p> <p>4 A Of course. So I was at work before I</p> <p>5 came here. Welcome to the liquor business.</p> <p>6 Q Other than that conversation did you</p> <p>7 ever speak with Kevin Randall about this case?</p> <p>8 A No, sir.</p> <p>9 Q Have you ever had any conversation</p> <p>10 with any coworkers about this case?</p> <p>11 A No.</p> <p>12 Q Are you under the influence of any</p> <p>13 medications, narcotics?</p> <p>14 A No.</p> <p>15 Q Are you under the influence of alcohol</p> <p>16 today?</p> <p>17 A No.</p> <p>18 Q Can you think of any reason why you</p> <p>19 wouldn't be unable to testify truthfully and</p> <p>20 accurately?</p> <p>21 A No.</p> <p>22 Q Are there any documents which would</p> <p>23 show the time period that you worked without a</p> <p>24 classification?</p> <p>25 A Maybe HR might have something.</p>	<p style="text-align: right;">Page 88</p> <p>1 A Thank you.</p> <p>2 B. FINKELSTEIN</p> <p>3 Q So to the best of your recollection it</p> <p>4 was the middle of 2018 when Kevin Randall had a</p> <p>5 conversation with you?</p> <p>6 A Yes. I guess that it was because it</p> <p>7 was about a year where I was doing the inventory</p> <p>8 stuff before I got -- so that would make sense.</p> <p>9 Q So after a year of getting involved in</p> <p>10 the inventory is when you had another change in</p> <p>11 your employment?</p> <p>12 A Right.</p> <p>13 Q And that change of your employment</p> <p>14 happened in what year?</p> <p>15 A That was in like December of January</p> <p>16 of 2020.</p> <p>17 Q And did you have any warning that</p> <p>18 Peter Lazar was going to take your place?</p> <p>19 A No.</p> <p>20 Q Had he worked for Southern before or</p> <p>21 was he a new hire?</p> <p>22 A A new hire.</p> <p>23 Q Did Kevin Randall give you any reason</p> <p>24 why you weren't fired?</p> <p>25 A No.</p>

22 (Pages 85 to 88)

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<p>1 Q Other than telling you to figure out</p> <p>2 B. FINKELSTEIN</p> <p>3 what to do did he give you any further</p> <p>4 instructions?</p> <p>5 A No.</p> <p>6 Q During the time period that you were</p> <p>7 working without classification did you have a</p> <p>8 manager?</p> <p>9 A If I don't know if John was still</p> <p>10 alive at that point. I really don't recall. I</p> <p>11 don't recall if John Wilkinson was still alive. I</p> <p>12 think he was, so I think he was still my manager.</p> <p>13 Q Did you have any conversations with</p> <p>14 John Wilkinson about what you were supposed to do</p> <p>15 when you were --</p> <p>16 A Yes.</p> <p>17 Q -- not classified?</p> <p>18 A Yes.</p> <p>19 Q What did John say?</p> <p>20 A I don't know. It was classic.</p> <p>21 Q Was anyone tracking your attendance</p> <p>22 when you were unclassified?</p> <p>23 A No.</p> <p>24 Q So you have Kevin Randall telling you</p> <p>25 to figure it out?</p>	<p>1 Southern?</p> <p>2 B. FINKELSTEIN</p> <p>3 A No.</p> <p>4 Q We talked earlier about a lawsuit that</p> <p>5 was filed by Ena Scott, correct?</p> <p>6 A Right.</p> <p>7 Q And was there another lawsuit filed by</p> <p>8 another inventory control clerk?</p> <p>9 A I remember hearing something many</p> <p>10 years ago, but I know nothing about it.</p> <p>11 Q Do you know whether Josienne Sajous</p> <p>12 filed a lawsuit?</p> <p>13 A Yes. That's who it is.</p> <p>14 Q Did Tatiana Herdocia also file a</p> <p>15 lawsuit against Southern?</p> <p>16 A I have no idea.</p> <p>17 Q Do you think it was strange two women</p> <p>18 who have reported to Maria Suarez had filed</p> <p>19 lawsuits against Southern?</p> <p>20 MS. CABRERA: Objection. Off the</p> <p>21 record.</p> <p>22 (Whereupon a discussion was</p> <p>23 held off the record).</p> <p>24 A I do find it strange. I don't find</p> <p>25 anything strange.</p>
Page 90	Page 92
<p>1 A Yes.</p> <p>2 B. FINKELSTEIN</p> <p>3 Q And you asked John Wilkinson what you</p> <p>4 are supposed to do, and he said I don't know?</p> <p>5 A Right.</p> <p>6 Q And did you receive any other guidance</p> <p>7 or direction on what you were supposed to be doing</p> <p>8 when you worked without a classification?</p> <p>9 A No.</p> <p>10 Q Did anyone tell you why you were not</p> <p>11 being terminated?</p> <p>12 A No.</p> <p>13 Q Did you wonder why you weren't being</p> <p>14 terminated?</p> <p>15 A Not really.</p> <p>16 Q Do you have any opinion or belief as</p> <p>17 to why you wasn't terminated if somebody was hired</p> <p>18 to do your job?</p> <p>19 A Yes. I think that they knew -- I</p> <p>20 think that even maybe Kevin knew like there was</p> <p>21 some value. I think he was maybe not sure of his</p> <p>22 decision. I think he just didn't want to lose</p> <p>23 me.</p> <p>24 Q Do you know whether Maria Suarez had</p> <p>25 any role in the lawsuits that were filed against</p>	<p>1 Q During your entire employment at</p> <p>2 B. FINKELSTEIN</p> <p>3 Southern Wine and Spirits had you heard of any</p> <p>4 other discrimination lawsuit against Southern</p> <p>5 other than the one filed by Josienne Sajous and</p> <p>6 the one filed by Ena Scott?</p> <p>7 A I didn't know either of them were</p> <p>8 discriminated against so the answer is no, but I</p> <p>9 didn't even know that they were -- based on</p> <p>10 discrimination.</p> <p>11 Q Do you know what their lawsuits were</p> <p>12 about?</p> <p>13 A Josienne I had no idea. And Ena, I</p> <p>14 thought it was about her title. I thought it was</p> <p>15 a title salary thing.</p> <p>16 Q Did you learn about Ena's lawsuit from</p> <p>17 anyone else?</p> <p>18 A No.</p> <p>19 Q Did you ever ask anyone what Ena's</p> <p>20 lawsuit was about other than your attorney?</p> <p>21 A No.</p> <p>22 MR. MOSER: Thank you. I have no</p> <p>23 further questions.</p> <p>24 MS. CABRERA: I actually have a</p> <p>25 question.</p>

23 (Pages 89 to 92)

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<p style="text-align: right;">Page 93</p> <p>1 EXAMINATION BY 2 B. FINKELSTEIN 3 MS. CABRERA: 4 Q Can you explain to us what you meant 5 when you said earlier that Maria was not hitting 6 the floor in connection with her job duties? 7 A Well, to double check or, you know, to 8 do some of the work involved in that position you 9 have to occasionally go into the warehouse and 10 check things physically yourself, and that's 11 something that she did not do. 12 Q How do you know she didn't do that? 13 A I saw it, and then often I would end 14 up going out on the floor to check. 15 Q You also said that the cycle counters 16 told you that they were doing the same counts 17 every day? 18 A Right. 19 Q Do you recall that? 20 A Mm-hmm. 21 Q Is there any correlation between the 22 cycle counters telling you that they are counting 23 the same counts every day and the fact that Maria 24 was not hitting the floor? 25 A Yes.</p>	<p style="text-align: right;">Page 95</p> <p>1 questions. 2 B. FINKELSTEIN 3 CONTINUED EXAMINATION 4 BY MR. MOSER: 5 Q Did Maria have an RF scanner? 6 A I am sure she did. 7 Q If Maria counted product with her RF 8 scanner would that be reflected in Southern's 9 inventory system? 10 A It should. 11 Q Would she be able to count product 12 without being on the floor? 13 A No. 14 Q And do you know how many locations 15 Maria counted, again if was the inventory control 16 manager after WMI was implemented? I will 17 withdraw that question. Do you know how many 18 locations Maria was counting on the floor after 19 WMI was implemented? 20 A Do I know how many? No, I don't. 21 Q Did you ever follow her for a day? 22 A No. 23 Q How large is the warehouse? 24 A A few hundred thousand square feet. 25 Q And that's just a warehouse activity,</p>
<p style="text-align: right;">Page 94</p> <p>1 Q What is the correlation between those 2 B. FINKELSTEIN 3 two? 4 A Well, whoever is leading that 5 department hits floor. They will either resolve 6 the issue, or there is another thing that we do in 7 the warehouse. It is inventory research. So if 8 we are missing product we put product into this 9 like temporary hold position, and then hoping it 10 is going to -- it is a big warehouse that it shows 11 up two days later. Someone finds it. So if you 12 don't hit the floor the only option that you have 13 is to just keep putting the same cycle counter 14 every day for the same item. 15 And what it invariably does, when I started 16 to do some of that work I would actually grab my 17 cycle counters and said don't get crazy. I had to 18 put Tito's back into a cycle counter. I know you 19 counted it for the last two days. I hope it is 20 going to show up, but that was happening like -- 21 constantly. I get it. It is frustrating for the 22 counters because they feel like they are not 23 making progress. They are counting the same 24 locations every day. 25 MS. CABRERA: I have no further</p>	<p style="text-align: right;">Page 96</p> <p>1 correct? 2 B. FINKELSTEIN 3 A Yes. 4 Q So your belief is that Maria was not 5 on the floor was based upon you not seeing her on 6 the floor or something else? 7 A It is based upon that it was based on 8 my director telling me I can't get her out of her 9 office so he would then vent to me ever once in a 10 while. 11 Q Who was your director? 12 A John Wilkinson. 13 Q Other than John Wilkinson telling you 14 that and you not seeing her on the floor is there 15 any other reason why you believe that she was not 16 on the floor? 17 A Not offhand, no. 18 Q Do you have any personal knowledge as 19 to how many locations Maria counted after WMI was 20 implemented on a daily basis? 21 A No. 22 Q Do you know if it was more or less 23 than 100 locations? 24 A More or less than what? 25 Q Than 100 locations?</p>


24 (Pages 93 to 96)

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Page 97	Page 99
<p>1 A A day?</p> <p>2 B. FINKELSTEIN</p> <p>3 Q Yes.</p> <p>4 A I would say less.</p> <p>5 Q How do you know that?</p> <p>6 A I am just -- based on how often I saw</p> <p>7 her on the floor.</p> <p>8 Q In terms of the warehouse itself how</p> <p>9 many different aisles are there?</p> <p>10 A How many aisles? There has to be 100</p> <p>11 in that area.</p> <p>12 Q Is each aisle the same length?</p> <p>13 A Generally with some exceptions.</p> <p>14 Q And generally what is the length of</p> <p>15 the aisles?</p> <p>16 A Oh, my God. I have no idea. Maybe 80</p> <p>17 yards. Some are much longer.</p> <p>18 Q On average would you say they are</p> <p>19 approximately 80 yards?</p> <p>20 A If I had to guess. I am really not</p> <p>21 good at that.</p> <p>22 Q How much time did Ena Scott spend on</p> <p>23 the warehouse floor the after WMI was implemented?</p> <p>24 A On an average eight hour day?</p> <p>25 Q Yes.</p>	<p>1 Q Can you give me an approximation of</p> <p>2 B. FINKELSTEIN</p> <p>3 when that was?</p> <p>4 MS. CABRERA: Objection. So now you</p> <p>5 are going beyond my --</p> <p>6 MR. MOSER: I am allowed to unless I</p> <p>7 close the deposition.</p> <p>8 MS. CABRERA: You did. You said you</p> <p>9 were done. You had no further questions.</p> <p>10 You are permitted to ask him whatever you</p> <p>11 want to follow up to my questions, but you</p> <p>12 cannot go back and start asking questions</p> <p>13 beyond these questions absolutely not, no.</p> <p>14 MR. MOSER: You are instructing him</p> <p>15 not to answer?</p> <p>16 MS. CABRERA: I am telling him not to</p> <p>17 answer the question.</p> <p>18 MR. MOSER: Okay.</p> <p>19 MS. CABRERA: You are not answering</p> <p>20 that question.</p> <p>21 THE WITNESS: I am with you.</p> <p>22 MR. MOSER: We will do it the hard</p> <p>23 way. We will be here all day.</p> <p>24 MS. CABRERA: No, we are not. We will</p> <p>25 leave. We can call the judge. You are</p>
Page 98	Page 100
<p>1 A I would say six to seven.</p> <p>2 B. FINKELSTEIN</p> <p>3 Q How many times did you see Maria in</p> <p>4 her office?</p> <p>5 A I didn't see her in her office, her</p> <p>6 back office when she was in the back office often</p> <p>7 because I stopped going back there after I had a</p> <p>8 couple of -- experiences. And then she was moved</p> <p>9 to the blue room office which is an office like in</p> <p>10 the warehouse, and she was there always.</p> <p>11 Q So she was always in the blue room?</p> <p>12 A Always in the blue room.</p> <p>13 Q Never left the blue room?</p> <p>14 A Very, very, very rarely saw her not in</p> <p>15 the blue room.</p> <p>16 Q So every time that you were in the</p> <p>17 blue room she was in the blue room as well?</p> <p>18 A The blue room is surrounded in glass.</p> <p>19 It is like a fishbowl sort of, so it is right in</p> <p>20 the front of the warehouse so every time I hit the</p> <p>21 warehouse, which is often, yes, she would be</p> <p>22 there.</p> <p>23 Q So can you give me an approximation?</p> <p>24 I know we mentioned Maria yelling, right?</p> <p>25 A (Nodding).</p>	<p>1 limited to ask him questions with regard to</p> <p>2 B. FINKELSTEIN</p> <p>3 what I asked. If you are going to go</p> <p>4 beyond that let's get on the phone because</p> <p>5 we are not going to be here all day.</p> <p>6 Q Do you remember when Maria was</p> <p>7 brought to the warehouse floor?</p> <p>8 A No.</p> <p>9 Q To the blue room?</p> <p>10 A I don't.</p> <p>11 Q When Maria went to the blue room did</p> <p>12 you ever see her in her office?</p> <p>13 A A few times.</p> <p>14 Q Two or three?</p> <p>15 A Yes. Then I stopped going.</p> <p>16 Q In total?</p> <p>17 A Yes. Two or three yes. I would say</p> <p>18 so. Not often. I didn't go back there.</p> <p>19 Q Okay. So when Maria had her office</p> <p>20 before she was moved to the blue room you know she</p> <p>21 wasn't on the floor because you didn't see her on</p> <p>22 the floor, correct?</p> <p>23 A Before she went to the blue room?</p> <p>24 Q Yes.</p> <p>25 A That would be correct.</p>

25 (Pages 97 to 100)

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Page 101	Page 103																																																			
<p>1 Q And because John Wilkinson told you he</p> <p>2 B. FINKELSTEIN</p> <p>3 can't get her out of her office?</p> <p>4 A Yes.</p> <p>5 Q How many hours per day was she</p> <p>6 spending on the floor after WMI was implemented?</p> <p>7 A I have no idea.</p> <p>8 MR. MOSER: I have no further</p> <p>9 questions.</p> <p>10</p> <p>11 (Time noted: 12:52 p.m.)</p> <p>12</p> <p>13</p> <p>14 _____</p> <p>15 BARRY FINKELSTEIN</p> <p>16</p> <p>17 Subscribed and sworn to before me</p> <p>18 This ____ day of _____, 2022.</p> <p>19</p> <p>20 _____</p> <p>21 Notary Public</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 B. FINKELSTEIN</p> <p>3</p> <p>4 CERTIFICATION</p> <p>5</p> <p>6 I, David P. Yuni, a Shorthand Reporter</p> <p>7 and Notary Public in and for the State of New</p> <p>8 York, do hereby certify:</p> <p>9 That the testimony of said witness was</p> <p>10 held before me at the aforesaid time and place.</p> <p>11 That said witness was duly sworn before the</p> <p>12 commencement of the testimony and that the</p> <p>13 testimony was taken stenographically by me and</p> <p>14 is a true and accurate transcript of my</p> <p>15 stenographic notes.</p> <p>16 I further certify that I am not related</p> <p>17 to any of the parties to the action by blood</p> <p>18 or marriage and that I am in no way</p> <p>19 interested in the outcome of this Matter.</p> <p>20 IN WITNESS WHEREOF, I have hereunto set my</p> <p>21 hand this 7th day of November 2022.</p> <p>22</p> <p>23 </p> <p>24 David P. Yuni</p> <p>25</p>																																																			
<p style="text-align: center;">Page 102</p> <p>1</p> <p>2 B. FINKELSTEIN</p> <p>3</p> <p>4 INDEX</p> <p>5</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">WITNESS</th> <th style="width: 30%;">EXAMINATION BY</th> <th style="width: 40%;">PAGE</th> </tr> </thead> <tbody> <tr> <td>B. FINKELSTEIN</td> <td>MR. MOSER</td> <td>4, 95</td> </tr> <tr> <td></td> <td>MS. CABRERA</td> <td>93</td> </tr> </tbody> </table> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	WITNESS	EXAMINATION BY	PAGE	B. FINKELSTEIN	MR. MOSER	4, 95		MS. CABRERA	93	<p style="text-align: center;">Page 104</p> <p>1</p> <p>2 ERRATA SHEET FOR: BARRY FINKELSTEIN</p> <p>3 BARRY FINKELSTEIN, being duly sworn, deposes and</p> <p>4 says: I have reviewed the transcript of my</p> <p>5 proceeding taken on 11/01/2022. The following</p> <p>6 changes are necessary to correct my testimony.</p> <p>7</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%;">PAGE LINE</th> <th style="width: 40%;">CHANGE</th> <th style="width: 40%;">REASON</th> </tr> </thead> <tbody> <tr><td>8</td><td>----</td><td>-----</td></tr> <tr><td>9</td><td>----</td><td>-----</td></tr> <tr><td>10</td><td>----</td><td>-----</td></tr> <tr><td>11</td><td>----</td><td>-----</td></tr> <tr><td>12</td><td>----</td><td>-----</td></tr> <tr><td>13</td><td>----</td><td>-----</td></tr> <tr><td>14</td><td>----</td><td>-----</td></tr> <tr><td>15</td><td>----</td><td>-----</td></tr> <tr><td>16</td><td>----</td><td>-----</td></tr> <tr><td>17</td><td>----</td><td>-----</td></tr> <tr><td>18</td><td>----</td><td>-----</td></tr> <tr><td>19</td><td>----</td><td>-----</td></tr> <tr><td>20</td><td>----</td><td>-----</td></tr> </tbody> </table> <p>21 Witness Signature: _____</p> <p>22 Subscribed and sworn to, before me</p> <p>23 this ____ day of _____, 20 ____.</p> <p>24 _____</p> <p>25 (NOTARY PUBLIC) MY COMMISSION EXPIRES</p>	PAGE LINE	CHANGE	REASON	8	----	-----	9	----	-----	10	----	-----	11	----	-----	12	----	-----	13	----	-----	14	----	-----	15	----	-----	16	----	-----	17	----	-----	18	----	-----	19	----	-----	20	----	-----
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